Public Utilities

FORTNIGHTLY

PARIS TRANSIT
1941

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Every day, thousands of coffee-lovers are discovering the clear coffee pleasure Silex alone gives them! Silex sales are climbing steadily—are now far ahead of last year's volume.

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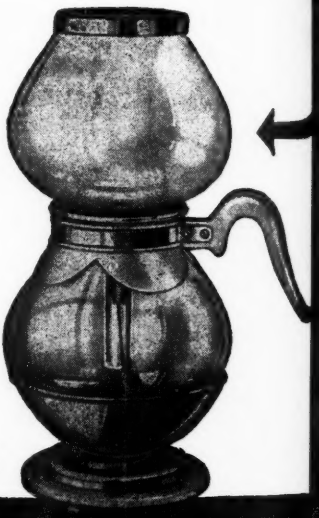
Feature Silex in your promotion and in your displays. Put Silex on your counters. Talk Silex to your customers.

You'll sell Silex—and you'll see your profits climb!



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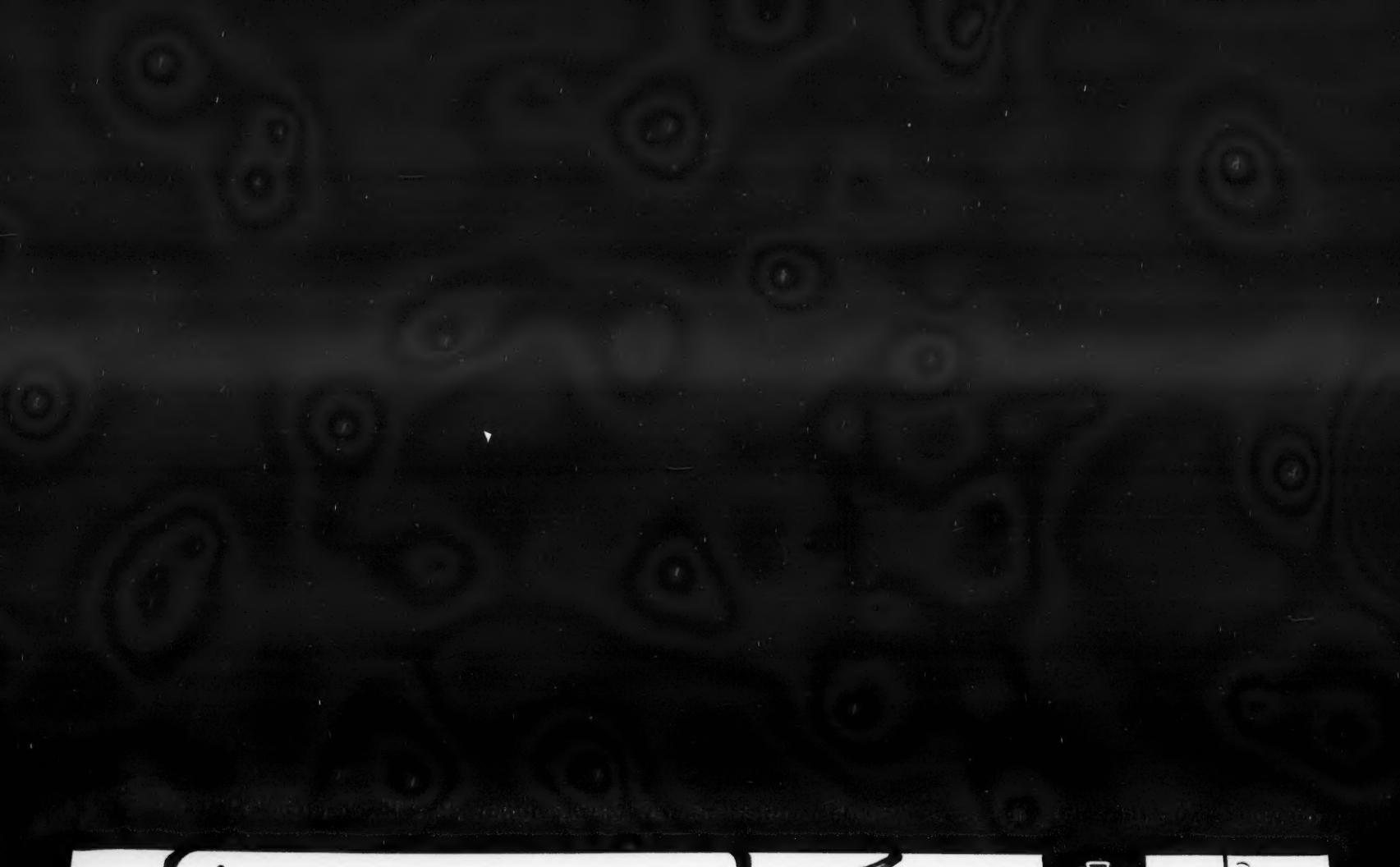
THE SILEX COMPANY, HARTFORD, CONN.

Push Genuine SILEX and watch your load climb



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Financial Editor—OWEN ELY

Public Utilities Fortnightly

VOLUME XXVIII *September 25, 1941* NUMBER 7

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

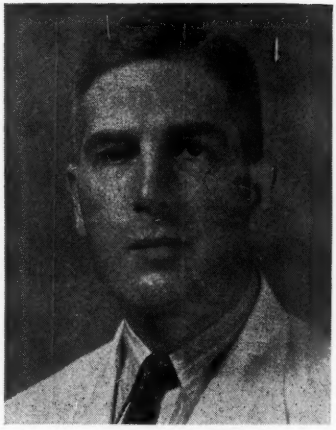
As these lines are written, members of the American Transit Association are preparing to assemble for their annual convention in Atlantic City (September 27th-October 4th). It will be the sixtieth national meeting of this body. The 1941 meeting will witness a revitalized transit industry in the United States, but one faced with a host of new problems and circumstances brought on by the emergency.

Gasoline rationing, shortage of equipment and materials, staggered hours, scarcity of qualified labor, and the possibilities of price-control legislation are some of the major troubles which the transit men will have to worry about in concert.

But these problems are small, indeed, in comparison with the difficulties of transit systems in war-torn Europe. On the cover of this issue there is a reproduction of a recent photograph taken in front of the Place de l'Opera, which is symbolic of what is happening in the large cities of a dozen different countries on the continent. There is shown a unit of the old Madeleine Bastille bus line in occupied Paris. It is drawn by horses because there is no gasoline today in occupied France for Frenchmen—even for the public services. Precious fuel is reserved for the Luftwaffe and the automobiles of the German officers.

In several Spanish cities where there are still electric street railways, horses are being used nevertheless, because there is not enough coal to generate the extra amount of electricity that would be consumed by trolley cars. From the Black sea to the White sea, from the Iberian peninsula to the fjords of Norway, the horse has been called out of his retirement in the pasture and the bicycle has been taken out of the attic to do substitute duty for a crippled and often nonexistent transit system.

But the will to win will save America from such experience. The transit industry has already shown the courageous spirit of American business, in general, by its performance in recent months under heavy strain. For the last decade the transit industry has been going through a critical evolutionary phase of its existence; namely, the transition from rail to rubber in all but the larger cities. Yet, in the wake of this difficult period, a sudden burden of defense activity has been thrust upon the transportation systems throughout the nation.



T. N. SANDIFER

Coming of the airplane requires a restatement of tort law.

(See Page 397)

Operations are bedeviled by shortages of labor and materials, rising expenses, and disturbed traffic conditions. Yet, with the exception of the recent labor trouble involving the Detroit municipal railway, there have been no reports of serious breakdown in service. American transit companies are moving the masses and moving them on time. The opening article in this issue by a member of our editorial staff, Francis X. Welch, gives us a graphic discussion of transit troubles during this emergency year of 1941.

It has been said, somewhat cynically, that enthusiasm for public ownership of the railroads dropped off considerably when it was discovered that they were no longer profitable. Recently, there have been suggestions that the very inability of some railroad lines to solve their financial problems satisfactorily makes it imperative for the government to take over the operations as a matter of public interest. Dr. Harold D. Koontz (Ph.D., Yale, '35), assistant professor of economics at Colgate University, examines this argument in his article in this issue, entitled "Must the Government Operate the Rails for Defense?" (Page 402).

DISCUSSIONS involving damage suits for negligence and other phases of tort law have not generally been considered within the field of PUBLIC UTILITIES FORTNIGHTLY. However, the liability of airplane operators in case of injury or damage due to careless operation struck us as being a sufficiently novel and interesting subject to have a place in this magazine. The article by T. N. SANDIFER, veteran Washington newspaper correspondent (beginning page 397), is a discussion of this type.

THE basis for this article is a proposal now before the Civil Aeronautics Board for determining the liability of air carriers on a uniform, equitable, and understandable basis. As the law stands today, a person who is struck on the head by a monkey wrench falling out of a flying aircraft might find his remedies quite different in different states. In common law jurisdiction the victim of the falling object might sue for damages on the old rule of *res ipse locquitur*, which has been governing falling object disputes ever since a beer barrel fell off a house roof and hit one of His Majesty's subjects back in the time of Lord Coke.

IN other jurisdictions, the victim might have to make some showing of actual carelessness on the part of the pilot. Such problems as contributory negligence, or the responsibility of a pilot for the conduct of his passengers, might enter into the picture. The question of awarding punitive damages is a factor. Hence the importance of the action being taken by the Civil Aeronautics Board to determine whether uniform standards of air liability can be established.

SPEAKING about transit troubles reminds us of an interesting suggestion made by a private citizen of the District of Columbia to help the rush-hour peak situation in the nation's capital. As a result of the defense boom, rush-hour traffic leaves things far from quiet along the Potomac. One local newspaper has asked its readers for suggestions about improving the situation. This particular reader must have suffered as a straphanger from the intrusion of shopping housewives with their numerous bundles on rush-hour street cars and busses.

ANYHOW, he suggested that the department stores feature "off-peak" sales. These would be sales restricted to such a time of day that the housewives would not get in the way of the workers in going to and from the downtown areas. It was pointed out that with the shrinkage of consumer goods and the scarcity of sales help, department stores might welcome an opportunity to curtail their special sales, offered under the heading of public interest.

IN this issue also is our regular annual feature, "What the State Commissioners Are Thinking About." This contains excerpts and digests from speeches and reports presented at the recent annual convention of the National Association of Railroad and Utilities Commissioners.

HAROLD D. KOONTZ

Is there danger of public ownership of railroads by default?

(SEE PAGE 402)

AMONG the important decision preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

LIMITED liability rates for motor truck operators are the subject of a decision by the New York commission. (See page 257.)

AN important decision of the Federal Power Commission is contained in this issue. After disposing of jurisdictional questions, the commission establishes electric rates on the prudent investment theory, excluding evidence of reproduction cost. (See page 263.)

METHODS of carrying taxicab operations in the city of Baltimore have come before a Maryland court on review of a commission order. (See page 282.)

THE New York commission discusses the history of conjunctional billing and intercommunicating-buildings riders for electric, gas, and steam service in a case involving a steam corporation. (See page 289.)

THE next number of this magazine will be out October 9th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What the State Commissioners Are Thinking About

In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 257-320, from 39 PUR(NS)

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

HAROLD L. ICKES
Secretary of the Interior.

"The entire Northwest should be public power without exception."

STEPHEN A. DAY
U. S. Representative from Illinois.

"I have been called a Nazi. My enemies are mistaken. I am not a Nazi; I am a Nazarene."

JOSEPH E. DAVIES
Former Ambassador to Belgium.

"Our country is today not engaged in a shooting war. It is, however, engaged in a debating war."

LOUIS LUDLOW
U. S. Representative from Indiana.

"When you rob a statesman of his publicity, you take away from him that which enriches you not and makes him poor indeed."

EDITORIAL STATEMENT
American Federationist.

"Today, with industry speeding to new production peaks, we are maintaining two armies—a military force of 1,700,000 men and an unemployed army of 5,300,000. Both, it seems, are likely to be with us for some time."

LEON HENDERSON
Administrator, Office of Price Administration.

"If anybody can show me that in the eight years I've been in this town [Washington] I've been a member of a Communist organization, I'll eat it on the Treasury steps and purge myself, if I can purge myself that way."

JOHN L. LEWIS
President, United Mine Workers of America.

"The St. Lawrence waterway will be an invitation, a new peril, in the barter game, for other countries to unload whatever they have for whatever price or trade arrangement that can be negotiated in order to maintain exchange money and rates."

H. S. BENNION
Vice president and managing director, Edison Electric Institute.

"The experience and resources of the organization operating a power system may be a bigger factor in the resulting service from it than the extent and condition of the reserves. Reports from the bombed areas of England bear out this observation."

WILLIAM GREEN
President, American Federation of Labor.

"While other elements in our population flirted with illusory attractions of Communism, Fascism, and Nazism, the American Federation of Labor turned a deaf ear to such siren voices and remained steadfast and loyal to the principles of American democracy."

CARL SNYDER
Former statistician, Federal Reserve Bank of New York.

". . . it is only as capitalism becomes the servant of the people, giving them cheaper goods, higher wages, greater buying power, that it succeeds."

TOM P. WALKER
President, Gulf States Utilities Company.

"The utility industry has no chance whatever of winning a price-cutting war with the government of the United States in its present state of mind."

EDITORIAL STATEMENT
Broadcasting.

"Maybe the whole business [radio broadcasting] should offer to hand itself over now [to the government], when something can be salvaged through a President and Congress who certainly do not want government ownership, rather than have it taken over a chunk at a time."

JOSEPH C. O'MAHONEY
U. S. Senator from Wyoming.

"The big operator is here in Washington and is being heard to such effect that he is not only getting the bulk of the defense contracts but is piling up inventories of raw material. A small portion of it would save many factories and many communities from the disasters which threaten them."

LOUIS GUENTHER
President and publisher, Financial World.

"There is no danger that we will be compelled to pinch our stomachs, or draw in our belts, until we begin to look like gangling straw men. What will happen instead is that we will shed some of our fat that has come from overindulgence in waste, and that will prove a good thing . . ."

C. E. GREENWOOD
Commercial director, Edison Electric Institute.

"You cannot make people buy kilowatt hours by maneuvering a 60- or 100-watt lamp into a socket replacing a 25- or 50-watt size. The customer will maneuver it back —unless return on the investment can be shown to the consumer for that extra 12 cents to 18 cents a month which the higher wattage lamps may add to the bill with normal use."

HENRY A. PALMER
Editor, Traffic World.

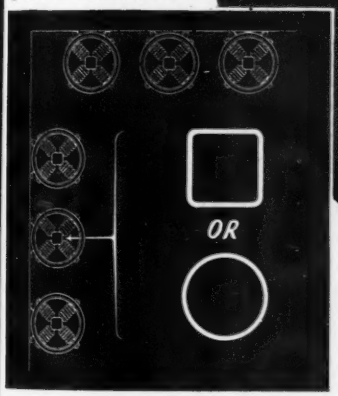
"The inefficiency of government [railroad] operation must not be repeated in another war, much less because of a threat of war. This time the experiment might prove permanent, and other agencies of transportation as well as industries more or less affiliated with them must realize that if the government takes over railroads, sooner or later it will take them over also."

EDITORIAL STATEMENT
The Wall Street Journal.

"There has existed for some time in Washington a certain school of thought which has argued that the petroleum industry should be made a 'public utility.' In the eyes of most of those who hold this theory, a public utility appears to be something which government officials tinker with and order about while the nominal owners shoulder any financial losses resulting from the experiments that the ardent bureaucrats have a mind to make."

Note neat, streamline appearance—easily accessible to inspection and adjustment.

No superstructure necessary—easily mounted to wall or ceiling. Note air gap between phases. Buses can be round or square as shown below.



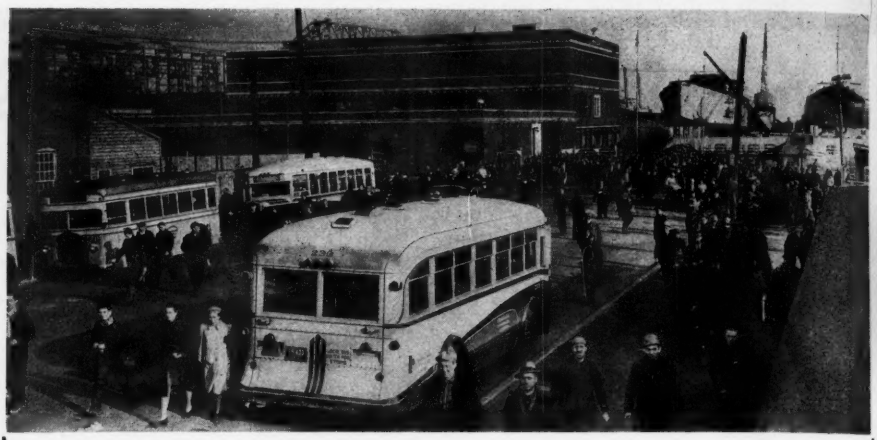
R&IE METAL ENCLOSED BUS—Eliminates Interphase Shorts.

Expensive equipment investments may now be safe-guarded from interphase shorts often due to dust pocket flashovers in congested areas where buses are exposed, or due to support structure failure. Here is a new outstanding design consistent in cost with any type of bus structure.

1. **All stresses taken by mounting frame with insulators in compression loading under all conditions.**
2. **Gasketed covers are housings only, —take none of the stress.**
3. **Installation and adjustment made before covers are put on.**
4. **Housing covers can be removed easily for inspection.**

RAILWAY AND INDUSTRIAL ENGINEERING CO.

GREENSBURG, PA. . . . . In Canada, EASTERN POWER DEVICES, Ltd., TORONTO



How to Get a New Slant on Transit's Emergency Problems

Men must get to work in ever increasing numbers, and it's transit's job to get them there, despite a host of new restrictions piled on top of all the old familiar problems.

That's why it's so important for you, as a transit executive, to spend a few days away from your desk at this particular time and get a new perspective on current events by taking part in important industry discussions at the 60th Annual A.T.A. Convention. Subjects on the agenda will include:

- **Transit Priorities**
- **Cooperative Promotion**
- **Peak-Hour Congestion**
- **Equipment Production**
- **Maintenance Techniques**
- **Effect of New Taxes**
- **Blackout Operation**
- **Staggered Work Hours**
- **Labor Shortages**
- **Purchasing Problems**

An extra added convention attraction will be a comprehensive Exhibit of Transit Equipment, Materials and Supplies, in which 43 leading transit manufacturers will participate.

For full program details, write A.T.A. Headquarters, 292 Madison Avenue, New York City. For hotel reservations, write directly to Chalfonte-Haddon Hall, Atlantic City.

60th Annual Convention

AMERICAN TRANSIT ASSOCIATION

Chalfonte-Haddon Hall, Atlantic City, September 27—October 2

ARMON-HERRINGTON *All-Wheel-Drive*

Lest You FORGET

- THAT THE TRUCK YOU BUY NOW MUST OPERATE NEXT WINTER TOO . .

s a hard world. Here we are "knee deep" in e, and someone has to remind us that another ter is coming!

nother winter, with mud and slush and sleet r foot—trucks miring down in soft ground or ning their wheels in futile effort to find traction slippery roads or in snow-drifted fields.

ut these difficulties fade into insignificance if the ks you buy *now* are Marmon-Herrington *All-eel-Drive* converted Fords. Traction and power ugh *all wheels* enable these trucks to operate, *comparative ease*, where no conventional drive ele could operate at all.

Even in mid-summer they will "go places and do things" no other trucks would dare attempt.

We convert all standard Ford models to *All-Wheel-Drive*, and build a complete line of "Heavy Duty" trucks with capacities up to 35 tons, having power and traction through four, or six wheels.

They cost more than some standard drive trucks—but they are *worth many times the difference for year around service*. Get all the facts before you buy another truck, and we believe that you will buy Marmon-Herrington *All-Wheel-Drive*. Illustrated literature and complete information mailed on request.

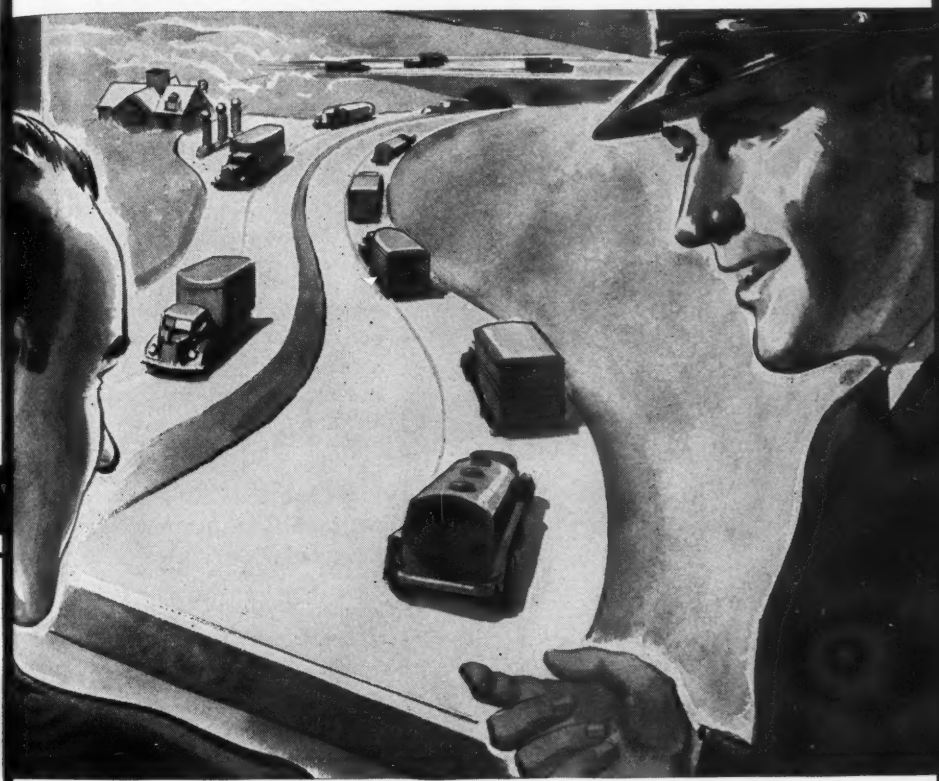
Cable Address: MARTON, Indianapolis, Indiana, U. S. A.

ARMON-HERRINGTON, Inc., *Indianapolis, Indiana, U. S. A.*

★ What is this new Timken Axaloy?

★ A tougher, harder, stronger steel

★ For Timken Axle Shafts and Gears!



Yours for years of service

nore than two years of experimental work and we take pride in announcing that Timken Axaloy now being used in Timken Axle Shafts and Gears, and will be applied to other Timken Axle rapidly as production permits.

nsive laboratory and actual road tests have con- y proved that Timken Axaloy Steel surpasses in , hardness and toughness the nickel alloy mate- rmerly used. The achievement of these qualities in ial containing no nickel will not only give Timken rts greater ability to withstand tremendous stresses, g and strains, but will directly aid national defense by releasing nickel to serve other vital needs.

In Timken's great engineering and testing laboratories, Timken Axle engineers are daily working to bring you better and yet better products. Specify Timken Axles when you buy your next truck. They're the Accepted Standard — *yours for years of service!*

TIMKEN AXLES

THE TIMKEN-DETROIT AXLE CO., DETROIT, MICHIGAN
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CRESCENT

Heat Resistant

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permitting use up to 75° C

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and to Federal Specifications

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NOW more economical to use, due to higher permissable current carrying capacity.

ENDURITE INSULATION'S superior heat resisting and high dialectric characteristics make it specially suitable for use when electrical conductors are required to meet abnormal temperature and aging conditions.

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Factory: TRENTON, N. J.—*Stocks in Principal Cities*

Concerning

THE AVAILABILITY AND QUALITY OF DODGE *Job-Rated* TRUCKS

THE FIRST obligation of Dodge today is to contribute to national defense. Our contribution, at present, is two-fold: In our extensive plants, Dodge is producing important national defense units, including thousands of Army trucks. Also, Dodge is building trucks for the transportation of vital commodities—the movement of which is the essence of *complete* national defense!

On the broad shoulders of America's great trucking industry lies the responsibility of moving largely increased quantities of materials . . . *efficiently, dependably, safely* and at *lowest cost.* The trucking industry's willingness and ability to do this job is beyond question. It becomes a matter of the availability and the quality of trucks. The need is for trucks that are *built* for the job . . . to *stay* on the job . . . *Job-Rated* trucks!

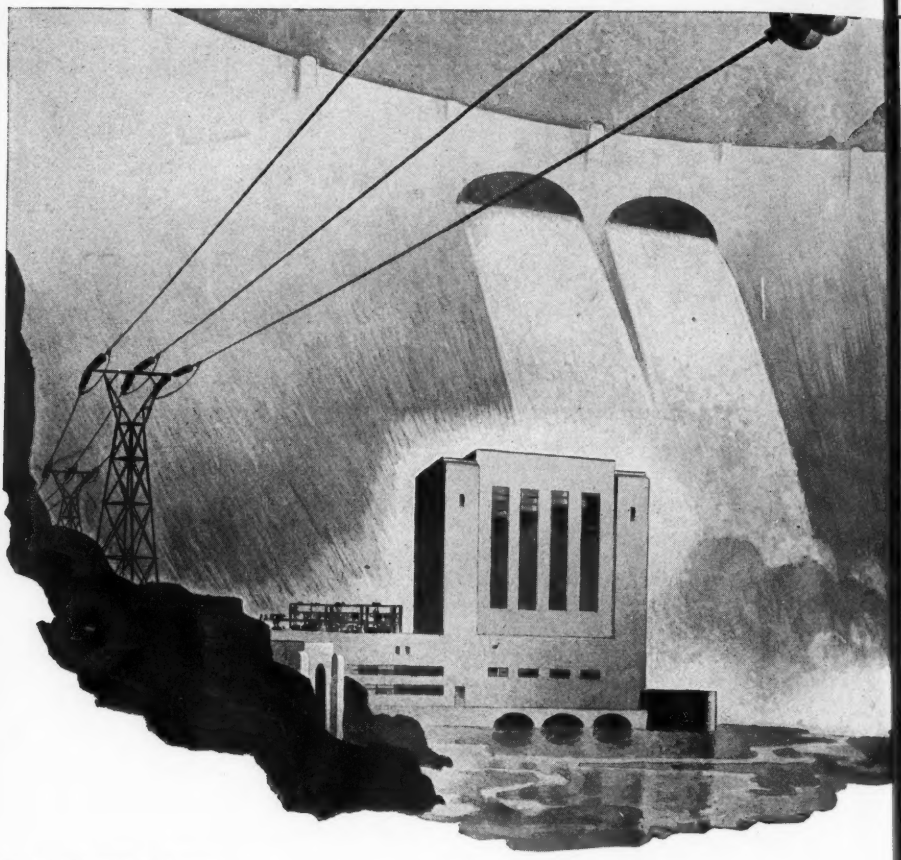
Today, we are building more trucks than ever before in our history: trucks for the Army; trucks for industrial defense hauling! They're *good* trucks . . . the *best* we've ever built! Best design, best materials, best workmanship, best quality throughout.

Now, we also announce more powerful trucks . . . much more powerful than ever before. We're building these higher-powered trucks today . . . shipping them to our dealers. And, we'll continue to do our utmost to get trucks to you . . . quickly . . . as you need them.

Defense *needs* the trucking industry. The trucking industry *needs* trucks. Dodge is providing the best trucks that men, materials and machines can create, *Job-Rated* trucks of the same high standard of excellence that has won for Dodge its traditional reputation for Dependability.

President, Dodge Division, Chrysler Corporation

There can be no curtailment of Dodge Quality . . . no substitute for DODGE DEPENDABILITY



POWER . . .

as nearly unfailing as human skill can devise

THE almost flawless dependability that characterizes the electric power and light services of the nation today is the result of years of painstaking scientific development . . . conducted alike by the utility companies and by the industries which supply them with equipment. Because of the part which Exides have played in this development — because throughout the entire history of the electric industry the quality and dependability of these batteries have never varied — Exides occupy an enviable position. This explains why, in so many of the nation's largest power plants, Exides faithfully provide power for the operation of vital equipment, and, in emergencies, furnish light for the plant itself.

THE ELECTRIC STORAGE BATTERY CO.
The World's Largest Manufacturers of Storage Batteries for Every Purpose
PHILADELPHIA
Exide Batteries of Canada, Limited, Toronto

Exide
BATTERIES

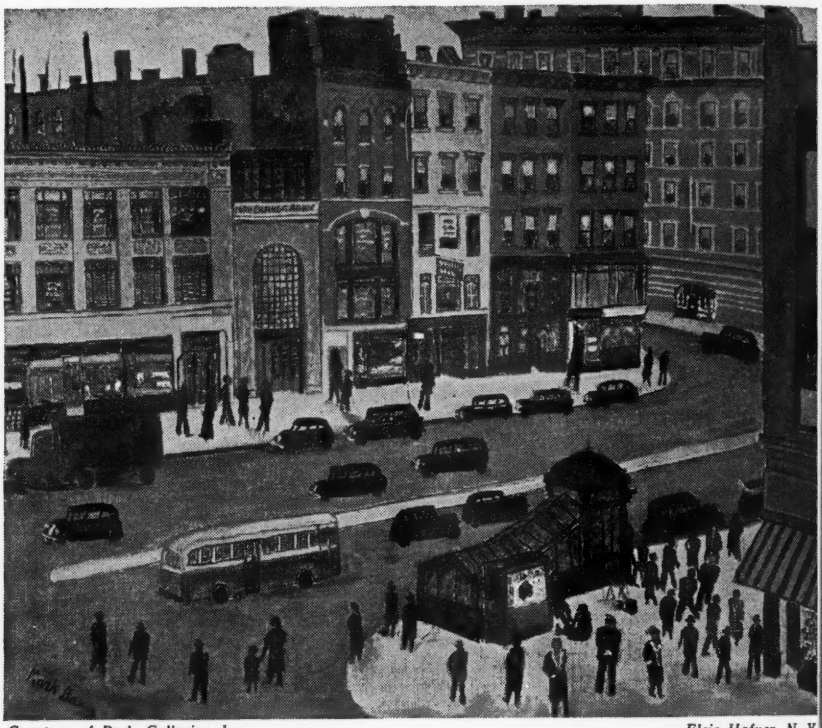
Utilities Almanack

SEPTEMBER

25	Th	¶ *Southeastern Electric Exchange, Engineering and Operation Section, starts convention, St. Petersburg, Fla., 1941.*
26	F	¶ *New England Gas Asso., Sales Division, opens meeting, Boston, Mass., 1941.* ¶ *New England Water Works Association ends meeting, Boston, Mass., 1941.*
27	Sa	¶ *American Transit Association starts annual convention, Atlantic City, N. J., 1941.*
28	S	¶ *American Society of Mechanical Engineers will hold fall meeting, Louisville, Ky., Oct. 13–15, 1941.*
29	M	¶ *Inter. Asso. of Electrical Inspectors, Southern Sec., convenes, Miami, Fla., 1941.* ¶ *American Bar Asso. opens meeting, Indianapolis, Ind., 1941.*
30	Tu	¶ *United States Independent Telephone Association will hold session, Chicago, Ill., Oct. 14–17, 1941.*

OCTOBER

1	W	¶ *Electrochemical Society starts fall meeting, Chicago, Ill., 1941.*
2	Th	¶ *EEI Meter and Service Committee holds meeting, Swampscott, Mass., 1941.*
3	F	¶ *Public Utilities Association of the Virginias opens session, White Sulphur Springs, W. V., 1941.*
4	Sa	¶ *Independent Pioneer Telephone Association will convene, Chicago, Ill., Oct. 16, 1941.*
5	S	¶ *American Gas Association will hold annual convention, Atlantic City, N. J., Oct. 20–24, 1941.*
6	M	¶ *EEI Prime Movers Committee starts meeting, St. Louis, Mo., 1941.* ¶ *National Safety Council convenes, Chicago, Ill., 1941.*
7	Tu	¶ *American Public Works Association will hold conference, New Orleans, La., Oct. 26–29, 1941.*
8	W	¶ *South Dakota Telephone Asso. opens convention, Sioux Falls, S. D., 1941.* ¶ *Amer. Inst. of Elec. Engineers opens district meeting, St. Louis, Mo., 1941.*



Courtesy of Perls Galleries, Inc. *Elsie Hafner, N. Y.*

Transportation

From a painting by Mark Baum

Public Utilities

FORTNIGHTLY

VOL. XXVIII; No. 7 SEPTEMBER 25, 1941

Transit and the National Defense

An appraisal of problems which confront the local transportation utilities during the present emergency and after.

BY FRANCIS X. WELCH

MODERN warfare means, essentially, *movement*. It means movement of men and materials farther, faster, and in greater volume than ever before. Hence, the importance of American transportation industries as a keystone in the national defense effort.

America was never exactly a slow nation, even in peacetime. We always had more miles of track, more private automobiles, and so forth. But before the emergency, the job of moving the masses and the consumer goods had settled down to a fairly predictable routine. In any given city, traffic experts could figure pretty closely how many people would ride the street cars to work and back every day, and how many would use their own cars. Long-distance passenger and freight movement had likewise assumed a definite pattern. The experts could figure on so many commercial travelers, so many motorists, so much freight traffic, according to the season and other factors. Even future trends could be fairly well estimated in that normal world which disappeared the day Hitler's boys marched down the Polish Corridor.

Today, transportation in America has been stepped up to a frantic tempo. It is no longer confined to a statistical averaging of commercial and pleasure travelers, commuters, and freight car movement. Today people are traveling who ordinarily would never have trav-

eled more than a few miles beyond their doorsteps. Hundreds of thousands of soldiers are rolling between camps on Army trucks. When on leave, they are patronizing strange urban carriers in near-by cities. Dozens of communities have doubled their working population because of defense industry. This means not only an added daily load to the local street cars and busses, but added interurban movement of workers gravitating from farms or quiet communities to the boom cities. New lines have had to be established to serve plants located in "mushroom" areas.

FOR example, there is probably no greater "mushroom" city of really large size in America today than the nation's capital, Washington, D. C. From a community of 485,869 less than a decade ago, it has sprung into eleventh place with a population of 663,091—and even this does not tell the whole story. Because of constitutional restrictions, the real city of Washington has spilled over the District of Columbia lines into the neighboring counties of Virginia and Maryland until the transportation system of the metropolitan area is daily being called upon to serve a living population of a million souls.

On top of this phenomenal increase, most of which has come during the past two years, there was the recent gasoline shortage scare, which threatened to swamp the local transit company with thousands of daily workers who had previously used their own automobiles.

"We ought to have nine months' warning if there's to be any drastic gasoline limitation so that our public transportation facilities will have to assume a substantially greater proportion of our total traffic load," was the complaint of President E. D. Merrill of the Capital Transit Company, when the restrictions of the gasoline conservation authorities threatened to throw this great burden upon the transportation system. *The Washington Daily News* of August 25th graphically sketched the problem in the nation's capital in an editorial which read in part as follows:

> Even without a gasoline emergency, a more efficient transportation system is essential because of the defense population increases. But if gasoline is to be curtailed, it is necessary to prevent paralysis.
>
> Other cities larger than ours have managed to provide fast transportation without subways. But our District commissioners have been so busy giving keys to the city to blossom queens and cutting ribbons at dedications that they haven't dealt with the problem. Thus thousands of persons have had to turn to their own autos for daily transportation if they wanted speed. This in turn has so jammed the streets as to further slow traffic and in despair send other thousands to their cars. And so on and on in a vicious spiral which even under ordinary circumstances could but end in a traffic tie-up, the extent of which is limited only by the capacity of the streets to hold stalled cars.
>
> Meantime, our busses and street cars creep through a jumble of traffic to halt some more at nearly every one of 1,600 stop lights. Persons living in outlying districts require more than an hour to reach their homes over circuitous transportation routes. And other people live in areas which are not served at all by public carriers.
>
> It is absurd to blame the Capital Transit Company. Why, years after it was conceived and months after hearings were held, there still is not a single crosstown bus line in this world capital because the District commissioners and the President have not been interested enough to fill vacancies which would give the public utilities commission a quorum so that it might decide where the line should run. The Capital Transit Company says it should have nine months to prepare for shouldering any great addition to its daily load.

OF course, complications in the field of transportation due to military

necessity are something to be expected and accepted. It is the repetition of an old story which has echoed through the corridors of time. Fundamentally, this is because organized transportation is itself but an historical outgrowth of military operations. In times of national peril, military necessities must always have first call on the transportation facilities of the nation, whether they be urban or for longer distances.

No one knows definitely when the first common carrier came into existence. Probably it was some time after the invention of the wheel, which goes back beyond the dawn of recorded history. But we do know, for example, that when Caesar's legions tramped through Gaul it became necessary for swift couriers, charioteers, and slow pack drivers to maintain lines of supply and communication.

Little by little these early military carriers began to extend their operations into profitable side lines. They took on the transport of messages, property, and occasional passengers for purposes which were not always connected with the furtherance of the imperialistic ambitions of the Roman Empire.

Later still, when civil administration was set up under Roman authority in conquered areas, these originally military lines of communication became easily and logically converted into peaceful carrier service. There followed increasing usage for commercial and other nonmilitary purposes.[1]

BUT there still remained an underlying obligation resulting from their military origin which made even these early common carriers peculiarly sensitive to the needs of national defense. And it has been pretty much the same story ever since.

England, being by virtue of location a seafaring nation, has always placed the accent on its merchant marine, buttressed by the British navy. The importance of this "life line of the Empire" has never been demonstrated so clearly as in the current battle of the Atlantic. In the United States, the national defense problem is somewhat different because we have a country of great land distances and are not dependent on water-borne imports.

[1] They even had rate troubles in those days. We read in the Latin author Tacitus that during the reign of the Roman Emperor Tiberius, a certain common carrier named Percennius engaged in transporting goods along the Appian Way. He was found guilty of exploiting his patrons by exorbitant charges and retaining parcels of shipments. The passage does not tell us whether a Roman Emperor suspended the rate tariffs, but we are told that he suspended Percennius—presumably from a stout tree.

¶ "OF *course, complications in the field of transportation due to military necessity are something to be expected and accepted. It is the repetition of an old story which has echoed through the corridors of time. Fundamentally, this is because organized transportation is itself but an historical outgrowth of military operations. In times of national peril, military necessities must always have first call on the transportation facilities of the nation, whether they be urban or for longer distances.*"

Hence, the accent on land transportation as part of the national defense program in America.

But just as it is the historical obligation of the transit industry to place itself at the disposal of national defense whenever needed, by the same token there is a corresponding duty imposed upon governmental authority to see that the transit industry is assured of materials and equipment to carry the burden.

At a time when virtually every industry in America is finding itself in a head-on collision with material shortages, it is understandable that there should be some conflict of opinion in Washington over the exact order of preferences whereby the available supplies of scarce materials shall be handed out. But there should not be any question about the relative importance of the transit industry.

AUGMENTING the recent defense traffic load, of course, has been the increased use of public carriers as a result of curtailment of private automobile operations due to the recent gasoline shortage. While this is only temporary — until new methods of transporting petroleum products from the southwestern oil fields are put into execution—the forthcoming reduction in the number of new automobiles is bound to result in increasing the number of common carrier passengers. This will certainly be felt in 1942; perhaps more keenly in 1943.

Complicating this situation is the acute shortage of materials needed for the manufacture of new street cars and busses. In an address before the National Association of Railroad and Utilities Commissioners at St. Paul, Minnesota, on August 26th, Ralph Budd, transportation commissioner in the Advisory Commission to the Council for National Defense, sketched the problem of urban transit operations during the emergency in part as follows:

> The sudden enlargement of defense plants and the building of new plants have so greatly increased local travel in many cities that the transit and bus companies are unable to meet the current requirements. Likewise, the great increase in intercity travel, largely due to the defense effort, including some troop movements, has put a heavy load on busses handling such business. In the last few years large quantities of aluminum have been used in construction of busses, but when that metal became scarce steel was substituted in redesigning.
>
> I believe that the state railroad and utility commissioners can be of real assistance in this problem by undertaking analyses of local transportation situations within the several states, and checking the applications of bus and street railway operators for priorities. I feel that the relatively small amount of material which would take care of the bus and transit requirements should be provided without further delay. This is all the more necessary in view of the probable reduction in the number of automobiles which will be manufactured. Not everyone is able to or wants to drive an automobile, and the street railway and bus therefore must be able to take care of such patronage. Presumably, the number of automobiles which will be built will be determined by the amount of material which can be spared from defense work, and it is not my purpose to advocate the curtailment of automobile manufacture or anything else beyond the extent necessary. To whatever extent, if at all, the manufacture of the limited number of public conveyances for passengers would mean reducing the number of automobiles manufactured, I believe that should be done for the general welfare.

THE Federal government has shown a certain degree of recognition of the emergency troubles of the transit industry in this respect. On August 30th, the Office of Production Management granted a blanket rating of "A-3" for busses, with provision for increasing production for the last half of 1941. Electric and trolley

Staggering Working Hours for Transit Loads

"STAGGERING working hours . . . is not a problem entirely within the jurisdiction of local authorities. The local authorities CAN *rearrange the hours of public employees, and appeal for coöperation by private employers to take similar measures. Some steps along this line may have to be taken in communities where the transit-traffic situation is getting out of hand. President Roosevelt's recent suggestion that defense industries ought to go on triple shifts should be of considerable assistance . . ."*

busses were included in this A-3 rating. Later on, it was expected that OPM would get out a similar order for railway car production which would include street cars as well as the heavier rail coaches. The OPM order stated:

> This step—increasing truck production and decreasing less essential automotive production—is necessary to conserve critical materials for defense.
>
> Since the total demand is greater than the supply, the quantities which are available must be diverted to the most essential uses, even though this requires dislocations in other channels, so that the defense program may be fully implemented by an adequate transportation system. . . .
>
> Transportation forms the one continuous link in the production of defense material. A piece of armament may be assembled in one plant but the materials and parts flowing into it have been produced in dozens of different places, and the completed products must be distributed to many defense areas. With defense production moving into high gear, with new demands being made on railroad capacity, the demand for truck transportation is growing larger every day and more truck capacity is being diverted to defense uses.

Obviously, the Washington authorities are concerned with the increasing demands for more busses as well as trucks. The A-3 priority rating is very high indeed, coming immediately behind the demands of industries directly participating in defense production. It applies to manufacturers of transit equipment—those which are in need of raw materials which cannot be obtained without high priority ratings. In addition, the rating of A-10 has been allowed to the *operating* transit companies for the procurement of equipment needed for repair and "emergency inventory" of transit facilities.

IN certain other ways, the government has tried to give the suddenly overburdened transit industry a helping hand. Common carrier busses have been excluded from the enforced rationing of gasoline on the eastern seaboard, recently ordered by the Federal Petroleum Coördinator. Again, on a somewhat smaller scale, the Federal

administration attempted to help the Capital Transit Company, operating in the city of Washington, to bear its staggering load, resulting from the sharply increased number of workers who have been brought to the national capital.

This was done by executive orders staggering working hours for all government departments and bureaus. But it only applies to the city of Washington. Elsewhere transit companies have had to depend on local authorities for relief through staggering employment hours. Such relief has on the whole not been forthcoming.

Staggering working hours (in cities other than Washington, D. C.) is not a problem entirely within the jurisdiction of local authorities. The local authorities *can* rearrange the hours of public employees, and appeal for coöperation by private employers to take similar measures. Some steps along this line may have to be taken in communities where the transit-traffic situation is getting out of hand. President Roosevelt's recent suggestion that defense industries ought to go on triple shifts should be of considerable assistance in helping transit operators all over the country to level the peaks and fill in the valleys to some extent. Educational campaigns directed at shopping housewives and school children would also help.

IN the final analysis it may be up to the transit companies themselves to formulate a practical plan for their own communities and take it up with local authorities and private employers. The latter are likely to be more coöperative when they know what is expected and why it is necessary.

Another step towards helping the transit industry solve a problem which has been troubling it for years was recently taken by the WPA headquarters in Washington. On August 27th Howard O. Hunter, WPA Administrator, announced that he had instructed state WPA directors to give preference to projects for the removal of unused trolley tracks from city streets. These abandoned rails would be used in the manufacture of guns, tanks, and other defense articles.

For legal reasons, the WPA can only remove abandoned publicly owned street car rails and not those to which title is still retained by private companies. But in cases where transit companies have no further need for the rails, the WPA program may prove very helpful.

In a number of cities of less than 300,000, which formerly had general street car service, there has been a steady trend toward the substitution of bus lines. Even a city as large as Rochester, New York, has abandoned its street car service entirely in favor of bus operations and a single subway division.

In the wake of these whole and partial substitutions there have developed differences over the obligation to remove rails and repave streets. Cities have demanded that transit companies assume the entire expense of excavation and repaving—sometimes seeking to make their demands a condition to the operation of new bus lines. Transit companies, hard pressed by the expense of transition from traction to bus operations, have occasionally balked.

BUT it ought to be practical, under the WPA plan, for cities and util-

ities to get together on deals whereby title to abandoned rails can be turned over to the cities in consideration for releasing companies from paving obligations. Transactions along this line have already been worked out in Columbia, South Carolina, and in a number of central Ohio communities, including the state capital of Columbus.

Of course, in the case of companies which continue to operate for the most part on tracks, the value of the old rails might exceed the salvage value and the repaving expense. This is especially true in view of the difficulty of obtaining new rails for current repair and maintenance.

With respect to new taxes, the transit companies have not been hit very hard under the tax bill now pending in Congress. Under the old Revenue Act, which still prevails, motor busses are subject to a 3½ per cent excise tax, the same as private automobiles. But regular commercial motor vehicles are subject only to 2½ per cent tax. This apparent discrimination against busses is eliminated in preliminary drafts of the new tax bill, even though national revenue requirements necessitated an increase in both figures. In other words, the new tax bill, as passed by the House, subjected busses to a 5 per cent excise tax, the same as other commercial vehicles; but private automobiles would be taxed 7 per cent.

Also, in the matter of taxes on tickets and fares, the transit industry came out pretty well in the House bill. Weekly street car and bus passes will not be subject to the proposed new 5 per cent tax on transportation fares. This results from an exemption from taxation of amounts paid for transportation that do not exceed 30 cents or for commutation or season tickets for single trips of less than 30 miles, and for one month or less.

IN the field of finance many transit companies still find their affairs tangled in the multiple problems of holding company reorganization being administered by the Securities and Exchange Commission. While a great majority of transit companies in America showed increased net earnings in 1934 over 1939, and will probably show a considerably greater increase in 1941, the problem of financing necessary purchases for new equipment can become most complicated for "system" companies as a result of restrictions placed on an exchange of

¶ "OBVIOUSLY, *the Washington authorities are concerned with the increasing demands for more busses as well as trucks. The A-3 priority rating is very high indeed, coming immediately behind the demands of industries directly participating in defense production. It applies to manufacturers of transit equipment—those which are in need of raw materials which cannot be obtained without high priority ratings. In addition, the rating of A-10 has been allowed to the* OPERATING *transit companies for the procurement of equipment needed for repair and 'emergency inventory' of transit facilities.*"

funds between corporate affiliates by the SEC.

Where management must also worry over the development of corporate integration or disintegration ordered by the SEC, the "front office" of many transit concerns is put under an additional strain during these trying times of emergency operation. The Holding Company Act was, of course, designed to affect only those holding companies whose subsidiaries or affiliates are engaged in gas and electric operations. However, a great many electric companies were cradled and born around the turn of the century as part of older street railway systems (even though most of these electric companies later became the principal breadwinner of such combination enterprises). Some of them also grew up in combination with older gas utilities; and a 3-way combination of all three utility forms is not uncommon.

While a certain amount of corporate segregation of transit operations from other utility relationship has been going on during recent years, these combination corporate relationships still exist extensively.

SOME idea of the extent of gas and electric holding company relations with transportation units can be seen in the tabulation below of holding company affiliations. It was taken from data contained in a report of the SEC entitled "Registered Public Utility Holding Companies, August 31, 1941."

The attitude of the SEC in executing the so-called "death sentence" under § 11 of the Holding Company Act is apparently this: Holding companies will be required to get rid of transportation subsidiaries unless they are an integral part of that portion of the gas and electric system which is to be retained. In the few tentative holding company dissolution orders which have been handed down to date, the question of retaining transportation subsidiaries has not been made a major issue. This is probably because, in requiring the holding companies to slough off large sections of their sys-

Name of Holding Company	*Location of Transportation Subsidiaries or Affiliates*
American Power & Light Co.	Florida; Washington
American Water Works & Electric Co.	Maryland; West Virginia; Pennsylvania
Associated Gas & Electric Co.	Virginia; South Carolina; New York; Pennsylvania; Massachusetts; Ohio
Central Public Utility Corp.	North Carolina; Virginia; Illinois; West Virginia
Cities Service Co.	Missouri; Ohio
Columbia Gas & Electric Corp.	Kentucky
Commonwealth & Southern Corp.	Georgia; South Carolina; Indiana; Tennessee; Ohio; Pennsylvania; Illinois
Electric Power & Light Corp.	Delaware; Texas; Florida; Louisiana; Utah
Engineers Public Service Co.	Texas; Georgia; Virginia
Midland United Co.	Indiana
The Middle West Corp.	Wisconsin; Kentucky; Pennsylvania; Kansas; Texas
National Power & Light Co.	North Carolina; Alabama; Pennsylvania
New England Public Service Co.	Maine; New Hampshire
North American Co.	Illinois; Kansas; District of Columbia; Wisconsin
Standard Power & Light Corp.	California; Pennsylvania; Colorado; Wisconsin
United Gas Improvement Co.	Delaware
United Light & Power Co.	Iowa; Illinois; Nebraska

tems which are themselves mostly gas and electric properties, transportation units have followed along, pretty much as the tail follows the hide.

THUS, in the case of the Commonwealth & Southern system, with total capitalization and surplus in excess of a billion dollars, the total book value of eleven transportation companies included in the system amounted to only a little more than $11,000,000. These eleven transportation companies were all subsidiaries of Transportation Securities Corporation, a wholly owned subsidiary of Commonwealth & Southern Corporation. In its tentative order of March 10, 1941, proposing the dissolution of the Commonwealth & Southern Corporation under § 11 of the Holding Company Act, the SEC report stated:

> As shown in Part II of the report, Transportation Securities Corporation has various subsidiaries operating transportation properties in Illinois, Ohio, Pennsylvania, Georgia, and Mississippi. It appears improbable that the transportation businesses conducted by the holding company system through the various subsidiaries of Transportation Securities Corporation are reasonably incidental or economically necessary or appropriate to the operations of any of the electric or gas utility properties controlled by the holding company system. Unless they are so incidental or economically necessary or appropriate they must be disposed of.[2]

Of course, most of our very large cities, such as New York, Chicago, Philadelphia, Detroit, etc., have long since had their main transportation systems separately organized. But the troublesome problem of segregating transportation units of the smaller communities from holding company affiliations could be a vexing problem for smaller units of the transit industry if the SEC wants to make an issue of the matter.

ONE other headache which the transit companies must suffer in common with other public utilities, which complicates even though it did not originate during the national emergency, is the collection of unemployment taxes. In most communities transit companies pay far more in taxes than they obtain by way of benefits.

For example, during the first quarter of 1941 the street car and bus lines in the District of Columbia, according to a bulletin of the Washington Board of Trade, contributed $47,645 as compared with benefit payments of $4,523 —a ratio of about 10½ to 1, the highest recorded by any industry except banking. The electric and telephone utilities were a little lower on the list. But all were in striking contrast with the number of industries which contributed only a small fraction of the amount disbursed in benefits.

In short, the transit industry with a good employment record is paying money which is being spent for the benefit of industries with bad employment records. A correction of this would be the adoption of the so-called "experience rating" as a basis for assessing unemployment taxes.

As to the future, after the emergency, the transit industry has some cause for optimism. Certainly the outlook is brighter in comparison with the

[2] Even if some or all of these properties might be retained in connection with electric utility operations, the extent of these operations is so small in comparison with the overall operations of the Commonwealth & Southern Corporation system that the possibility of their retention is not one of the substantial problems requiring immediate solution confronting this holding company system under § 11, and it is therefore believed unnecessary to determine these questions at this time.

bitter years of the last two decades when transit was confronted with increasing private automobile competition, as well as the general depression of the thirties and the expense of transferring from traction to automotive operation.

But the end of the emergency should see unused trackage of the transit companies pretty well washed up and their ghosts safely laid beneath new pavement. This will result from the rail shortage and the WPA program.

Doubtless, there will be additional transitions from rail to bus in some cities for years to come. But the emergency, with its accompanying demands for bus extension, presents an opportunity to many transit organizations to do what they have always wanted to in the way of liquidating unprofitable trackage.

What of patronage in the future? There is, of course, the limited private automobile production, already mentioned. This will not only bring new riders to the transit lines but also keep a certain amount of automobile traffic off the streets, thereby improving operating conditions. But after the emergency, automobile production will in all probability be resumed. Will this mean another era of patronage desertion for street cars and busses?

Undoubtedly a great many people will be persuaded to buy new automobiles when they can get them again easily and cheaply. And there certainly will be some recession of the present wave of street car and bus patronage. But, bear this in mind: The emergency is going to make America much more air minded and perhaps a little less automobile minded. The automotive industry is already thinking in terms of civilian aircraft production, after the shooting is over, now that their factories are being so extensively converted to military aircraft production.

LIKE as not the younger citizen of the future will care more about flying than riding in an automobile if he is in a position to buy and maintain a plane of his own. By the same token, this will mean that many a citizen who has, by necessity, contracted the street car or bus-riding habit during the emergency will go on doing the same thing in order to invest in a family plane. That will be true if current predictions of inexpensive "flivver planes" materialize with the coming of peacetime production.

Finally, consider that one of the biggest problems that will take up much of our thought and energy when peace comes again will be the readjustment of our entire business and economic set-up to a normal basis. It will probably mean a huge program of public works. And this will necessarily include many new highways, better and broader street and city planning, improved housing developments, the rehabilitation of slum areas.

All this in turn will mean much expanded transit operation. There will be problems to challenge the industry in this *post bellum* economy but there will also be opportunities. If the transit industry is as persevering as it has been through the dark decades of its history just behind us, it will meet that challenge. It must meet that challenge even though some units fail. For we must always have transit. In all probability we shall have much more common carrier transit in the future than ever in the past.

Civil Aeronautics Board Weighs Air Liability Law

Exhaustive study by the board's legal experts of all phases of the question indicates that recommendations will be made for sweeping Federal legislation on the subject.

By T. N. SANDIFER

DEFINITE indication that the Civil Aeronautics Board contemplates in the near future making recommendations for sweeping Federal legislation governing aviation liability in all its branches, commercial and private, has been given the industry by Oswald Ryan, member of the board, who has placed before interested parties the results of an exhaustive study by the board's legal experts of all phases of the question, with the request that comments and suggestions be given the board by October 15, 1941.

While not adopted by the board, this study has made a number of cogent recommendations, and some observations designed at the outset to engage the attention not only of aviation, but of the older systems of transportation, rail, motor bus, and automobile.

Discrediting the contention frequently encountered that there are fundamental grounds for according aviation accidents a treatment different from that which should be accorded to railroad, motor bus, and private automobile accidents, the legal experts who formulated the pending recommendations hold that "aviation liability legislation must be looked upon as an effort, in one field of transportation, to effect a reform or improvement of rules of tort liability along lines which might be equally suited to other forms of modern transportation."

Further, these experts declared, "the fact that any program recommended for aviation liability legislation may have ramifications in other fields of transportation is no reason for delaying its application to aviation if found presently desirable for the victims of aircraft accidents, for the aviation industry, and for the general public."

"Air transportation, as an industry, is relatively small and in its developmental period as compared with the railroad and bus industries; private aircraft are not yet as common as private automobiles; due to these conditions, the total number of casualties and the total value of property damage attributable to civil aviation is relatively small compared with other forms of transportation"—hence it was pointed out in recommending new legislation, less serious adjustments would be involved in putting into effect legislation embodying "radical changes in the principles" of liability governing aviation torts, than if these affected other common forms of transportation.

THE study now before the board was prepared by Edward C. Sweeney, of the board's general counsel staff, with the advisory aid of Samuel E. Gates, international counsel of the board, and Edward M. Weld, until lately also a member of the general counsel. It is intended to assist the board in considering a program of legislation, which obviously is on the books of the civil aviation authorities for early action.

The study held that state legislation, such as has been proposed from a number of sources, is not desirable at this time, and therefore should not be approved or recommended by the board to the respective state legislatures for various reasons set forth in considerable detail. It likewise held adversely in the case of certain international proposals. It recommends, instead, a complete Federal Aviation Liability Act, of which one of the most striking proposals would limit the liability of air transportation companies and private operators in accident cases, and would compel all classes of aircraft operators to carry liability insurance.

"A system of limited liability, coupled with compulsory insurance, established by Federal legislation, would be the most feasible and desirable solution of the aviation liability problem and would be in the best interest of aviation and the general public," the legal counsel held. "At the outset it should be made clear that this legislation should be considered as a completely new method of handling liability claims arising from civil aviation and that the several legal principles involved should be looked upon as integral and interrelated parts of the system . . . the constitutionality of the entire system rather than of its component parts should be the subject of inquiry if the suggested legislation is challenged."

HOLDING that damages to all persons and property should be compensatory only, the report urged a minimum of $2,500 and either a $15,000 or $20,000 maximum for death cases, and for injury cases, payment of expenses incurred by the injured person as a result of the accident up to $3,000, payment of a fixed amount for designated dismemberment and loss of eyesight, together with compensation payments of varying amounts for periods of incapacity resulting from accidents.

Imposition of such limits, it was pointed out, follows generally the philosophy of workmen's compensation acts. No limit is suggested for total liability, involving groups.

"Although occasionally hardship may result from imposing a limit upon

Safety Record of Air Carriers

" . . . the [airplane] accident of August 31, 1940, at Lovettsville, Virginia, broke a safety record of seventeen months for the domestic air carriers during which time no fatal accidents and no serious injuries occurred to either passengers or air-line crews or persons on the ground at air fields. However, in a period of months following this break, four crashes which killed twenty air-line passengers and injured eighteen others occurred . . . "

the amount recoverable for a nonfatal injury, it is believed that a pecuniary limit should be placed upon the obligation of the aircraft operator . . . ," the report held.

In general, the study held, common-law rules of negligence and proximate cause applicable to torts on land to passengers of common carriers are not particularly well adapted "to accidents occurring in any modern form of transportation," and that in "an alarming percentage of accidents the victim fails to recover what he should, and in other cases receives more than compensatory damages" due to various circumstances.

The board was advised, for instance, that investigations have shown that less than 20 per cent of the cases under study revealed the existence of legally competent evidence to prove the negligence of the aircraft operator.

During the past twelve years, the authors of the report stated, in discussing the difficulties involved in making cases against aircraft operators in accidents, more than 250 passengers have been killed in scheduled air carrier accidents, "and many more in other types of flying operations, and yet few aircraft negligence suits have been litigated."

THE study before the board recommends that the courts of law be empowered to fix awards according to statutory standards, although a Federal Accident Board might, in theory, be an advisable adjunct to the legislation. However, the jurisdiction would be lodged in the district courts.

The compulsory insurance recommendations are in effect that a Federal statute should vest in some Federal agency the power to require all aircraft operators, as a condition to obtaining a certificate of airworthiness for their aircraft, to present satisfactory evidence of insurance under regulations to be prescribed by the agency.

Recognizing certain difficulties in

the way of the proposed program, the students of the matter suggest an alternative plan under which a stipulated Federal agency could enforce aircraft operators generally, or by classes, to carry "admitted" liability insurance under provisions to be drawn by the agency, and under which the limits prescribed in the first scheme would be substantially lowered. A number of miscellaneous recommendations are appended covering details involved in the various proposals.

An interesting study included in the considerations deals with the relative risks of air travel and other forms of transportation. On this score the counsel reported:

> The comparative operation and accident statistics for domestic air carriers, passenger railroads, and intercity busses . . . show that the number of passenger lives lost per passenger mile traveled by scheduled airlines has always exceeded the number of lives lost per passenger mile traveled on the railroads. The chances of an air-line passenger being killed were from 8.5 to 98.6 times greater than that of a passenger on a railroad during the years from 1935 through 1939, and from 3.6 to 10.1 times greater than that of a passenger on an interstate bus. The fatality record for passengers in nonscheduled operations has been even less satisfactory than the record of the scheduled airlines.

At the same time, it was pointed out, the total lives lost, as a whole, in aviation accidents is almost insignificant in comparison with the total in rail and highway accidents. The study recognizes that comparative accident statistics may be variously used and, with respect to civil aviation, finds that the rate of accident frequency should decrease, with the various measures now being taken, or projected.

Commenting on the fact that the American Law Institute classifies aviation as a typical modern activity that is "ultra-hazardous," the study reported:

> Since aviation has become an accepted and essential mode of transportation and is rapidly becoming as much a matter of common usage as the railroad and the automobile it seems doubtful whether civil aviation in 1941 may be characterized as ultra-hazardous under the common law . . .

In this connection, the accident of August 31, 1940, at Lovettsville, Virginia, broke a safety record of seventeen months for the domestic air carriers during which time no fatal accidents and no serious injuries occurred to either passengers or air-line crews or persons on the ground at air fields. However, in a period of months following this break, four crashes which killed twenty air-line passengers and injured eighteen others, occurred, and figure in present plans by Congress members to restore the regulation of civil aeronautics to an independent status, instead of, as presently, a subordinate agency of the Department of Commerce.

The broad subject of air liability is covered by state statutes in a number of cases, while others classify air transportation systems as common carriers in regulating their liability. The study brings out that all scheduled air carriers already carry public and passenger liability insurance although not as yet specifically required to do so by either the CAA Act, or other Federal statute. It also recalls that in the railroad field there are apparently no statutes requiring operators to carry liability insurance of any kind. Commercial motor carriers coming within the Motor Carrier Act of 1935 are required to carry liability insurance of small amounts for passengers, property, cargo, etc., and a number of states

impose certain requirements on commercial truck and bus operators.

HOWEVER, a feature of the study is its finding that insurance settlements for air-line fatalities have been liberal when compared with those for similar automobile, motor bus, or railroad accidents. The average of $11,144 having been paid per death on air-lines over a 5-year period may, it should be pointed out, be due to other factors. Air-line passengers in certain instances may represent a different general level of passenger types than the average, say on a motor bus, but not necessarily.

The "Uniform State Aviation Liability Act," referred to in the study, was approved by a national conference of Commissioners on Uniform State Laws in 1938. In presenting to a limited circle of aviation and other interested representative, the comprehensive findings just made by its own experts, Mr. Ryan of the Civil Aeronautics Board said:

"The need for remedial liability legislation to be applicable after the occurrence of aircraft accidents has been under consideration for a number of years by committees of several organizations which have from time to time suggested legislative proposals . . . The report is released in advance of the board's formulating its own recommendations so that interested parties may have an opportunity to comment."

He indicated that limited hearings might be in order before final decision is reached in the board as to any recommendations it may make, or any action on the various proposals now before it is taken. However, Mr. Ryan indicated that it is the board's intention to consider the matter "as soon as possible" after the various parties have been heard.

The presentation of the matter now with the board is characterized as the most exhaustive and detailed ever made, and covers much more in relation to all phases of liability legislation and insurance than is covered here.

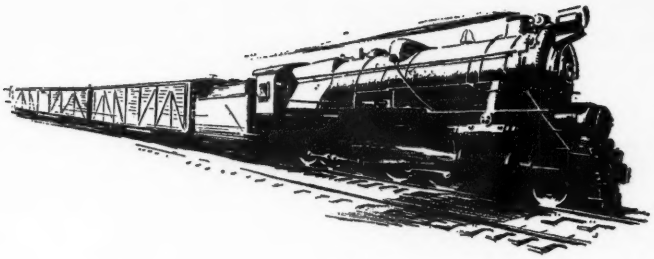
The increasing use of air transportation by all classes of passengers, in comparison with a few years earlier when it was decidedly a de luxe and emergency facility, together with the anticipated growth, even before the present war emergency is over, in the air freight business, has been cited by various parties as an inducement to bring the entire question into debate again.

The Uniform Act mentioned earlier failed to win approval of aviation interests at the time, and the reaction of these and other groups concerned is now awaited.

The Evolution of the Electric Lamp

"ELECTRIC lamps are made in more than 9,000 sizes and types. They range from the 'grain-of-wheat' lamp used in surgery to the 1,500-watt lamp used for out-of-door lighting. Since 1900 the type of lamp base had been standardized, with a result that 175 types formerly used in dwelling houses have been reduced to one, with happiness and savings for everyone concerned. All of this, and much more, the Department of Justice has set out in the 160 pages of its antitrust complaint of late January against makers of electric lamps."

—STATEMENT,
Washington Review.



Must Government Operate the Railways for Defense?

That depends, in the opinion of the author, on the recognition of the factors which led to government operation during the last war and prompt measures to correct them—comparison of the present emergency with the 1917 situation.

By HAROLD D. KOONTZ

In some quarters it seems to be a bygone conclusion that the government will have to take over operation of American railways as it did in the first World War. There are persons both inside and outside of government circles who believe that the present emergency will demand such action, whether or not the United States enters the European conflict as an active belligerent. For the national defense effort has been developing on such a large scale that active belligerency would probably not strain the economic machinery of the nation much more than the "all-out" program of aid promises to do. Since "bottlenecks" in transportation affect more businesses than would be the case in any other industry, the government would not long tolerate a breakdown in transportation facilities.

It is no mystery why the Federal government took over operation of the railroads late in 1917 and it should be clear as to what factors might lead to similar action during the present emergency. But there may be differences between 1917 and today which will make government operation unnecessary. Because government operation has proved to be costly—having cost the Federal Treasury over $1,600,000,000 during the first World War, is disruptive to business, may now involve transport agencies other than railroads, and may make return to private ownership difficult, the probable causes of government operation should be understood. If they are understood by managements, shippers, workers, and the general public, measures might be taken to avoid a second period of Federal control.

Reasons for Operation in First World War

WHY was the government forced to take over the railroads in 1917? The compelling cause was the breakdown of transportation facilities and the inability of the railroads to handle traffic as expeditiously as war needs seemed to warrant. Many reasons can be advanced for the traffic congestion of 1917 and the failure of the railroads to solve it. One cause was the heavy export business and the disruption of ocean shipping brought on by the German submarine campaign. Another was the transfer of coastwise ships to the government for war purposes and the resultant exaggeration of the traffic burden placed on the railroads. Shipbuilding on the Atlantic seaboard contributed to the eastward flow of freight. Much of this traffic moved under priorities granted by a host of Army, Navy, and civil authorities. Thousands of cars moving under priorities arrived at ports before ships were available for loading and at shipyards long before the materials were needed for construction. This indiscriminate and unwise granting of priorities, coupled with the unprecedented eastward flow of traffic, meant that cars could not be unloaded, with the result that terminal facilities became crowded and sidings filled with unloaded cars.

A STRIKING example of the confusion resulting is given by the clogging of terminals near Philadelphia and the crowding of sidetracks for many miles inland occasioned by the shipment of carloads of materials to the Hog island shipyard even before the tracks were laid to the shipbuilding site or facilities were constructed for unloading. As a consequence, normal traffic to eastern terminals was not only impeded, but freight cars were used for storage rather than for transportation.

MOREOVER, railroads found themselves in difficulty in obtaining an adequate supply of cars and locomotives. Rising costs, unaccompanied by adequate increases in railroad rates, as well as the competition of government and private agencies for capital, made it difficult for the railroads to obtain funds for the purchase of adequate equipment. Even the inadequate orders of cars and locomotives could not be delivered because of the competition by the government for war materials. Moreover, the shortage of skilled labor made it difficult for the railroads properly to maintain such equipment as they had and to reduce the number of unserviceable cars and locomotives.

The railroads undertook several coöperative measures to solve the traffic problem before the government assumed full control in the latter part of 1917. As early as December, 1916, the railroads established a Car Service Commission with authority to investigate equipment needs and to issue orders for the return of empty cars to "home" lines. Although the Interstate Commerce Commission coöperated with this agency, the former felt that it had no power to enforce orders dealing with cars and the Car Service Commission had no ample authority to make the railroads comply. This situation was rectified somewhat by the Esch Car Service Act of May, 1917, through which broad powers over car service were given to the Interstate Commerce Commission, but the principal reliance for car distribution was

still placed on the voluntary coöperation of the carriers.

With the entry of the nation into war in April, 1917, more thorough organization of the railroads appeared to be needed with the result that the Railroads' War Board was organized. This board was designed as an executive committee of the railroads and was supported by the pledge of nearly all the nation's roads to permit the board to formulate policies of operation which should be accepted and "earnestly made effective" by the managements of individual railroads.

In spite of the organizations set up by the carriers and the coöperation of governmental agencies, the railroads were unable to move the traffic to the satisfaction of the national government. In large part due to government policy, the railroads had developed as competing enterprises and had difficulty in effecting a unified service. Coördination was still voluntary, since the War Board had no governmental authority. Railroad managements, despite their unquestioned patriotism, still had their own lines and cost to consider and did not feel that they could operate their businesses without regard to the interests of investors in railroad securities. Moreover, railroad managements were not willing to commit themselves entirely to coöperation, in view of the status of the antitrust laws and the antipooling provisions of the Interstate Commerce Act. In this connection it is interesting that the Department of Justice itself regarded the pooling of railroad traffic as of questionable validity. Furthermore, the railroads were hamstrung by the numerous and indiscriminate granting of priorities so that the carriers were legally forced to move traffic in ways which increased traffic congestion.

The railroads were also unable to hold employees and to obtain equipment. The draft of men for military service took many employees who might better have been deferred, and the employment possibilities in armament industries drew other men out of the railroad industry. As was noted above, the inability of the railroads to obtain equipment was accentuated by government war-time orders, by the competition of the government for funds in the capital market, and by the shaky position of railroad credit which years of too low rates and wasteful financial practices, as well as rising war-time costs, had created.

One should not imply that the program of the carriers was a complete failure. The War Board and the Car Service Commission did accomplish much in the improvement of transport service. Pooling of box cars was facilitated, loading of cars was increased, passenger services were curtailed to

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make way for better freight carriage, and shipments were speeded so that in 1917 far more freight and passenger traffic was hauled than ever before in the railroads' history. But these accomplishments did not remove the traffic congestion and the government was in no temper to wait long for the results of carrier coöperation.

WITHOUT going into the question of whether complete government operation during the World War did a better job in the movement of traffic than would have been possible under private operation, with government assistance in funds and authority, the above sketch of the causes of government control shows adequately what led the government to take over the railroads. In the present transportation crisis the question of government operation will almost surely be decided on the same grounds. If the railroads can move traffic expeditiously in spite of the demands of national defense, the government will leave the carriers under private management. But if transportation shortages appear in the railroad industry, the national government will probably waste no time in taking over operation of the industry. At the present time certain danger signals which bear a likeness to those which occurred in 1917 are appearing. But there are certain factors in the present crisis which seem to be quite different from 1917 and which may save the railroads from government operation.

Disturbing Factors in Present Crisis

WHAT are some of the disturbing factors in the present transportation crisis? By far the most serious cause for concern is the question whether the railroads will be able to move the traffic with the facilities at their command. Annual traffic peaks usually occur in October. Against peak weekly carloadings in October, 1939, of 856,289 cars, and in October, 1940, of 837,651, weekly carloadings at the end of June this year were running above 900,000 cars. At the annual peak next October it is probable that loadings will increase to more than 1,000,000 cars per week. That this volume is and promises to be much larger than was foreseen not many months ago is evidenced by the estimates of the American Association of Railroads. Only last March an official of that association held that the October, 1941, peak would be approximately 870,000 cars per week, and the October, 1942, peak would equal 930,000 cars. As it has been found necessary to revise estimates upward, more and more concern has been felt about the adequacy of railroad equipment to meet the demands of defense transportation.

To show how close the car equipment situation promises to be, one should look at the car surpluses in relation to past carloadings, to the increase in cars available, and to the possibilities of improving car utilization. With carloadings running under 800,000 per week last March, surplus cars were only 75,000 out of a total supply of serviceable cars, including those privately owned, of 1,724,000.

ALTHOUGH the railroads have since been adding cars, the rise in carloadings and the relatively small surplus have meant that some shortages have already appeared here and there in transportation service. Moreover,

Reasons for Traffic Congestion of 1917

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the best record the railways have ever made indicates that a total car supply of 1,850,000 cars is necessary for the loading of 1,000,000 cars per week. This differential is, of course, due to the delay in loading and unloading and the time required for necessary empty and loaded car movement. If the requirements of October, 1941, should run to million-car weeks, as seems probable, the railroads would need at least 126,000 additional cars over those available in April. Owing to the preponderantly eastward flow of traffic under the lend-lease program and to the fact that shortages can occur in certain places even with an over-all surplus of cars, completely adequate service would probably demand the addition of even more cars.

The railroads are planning to add 100,000 cars to their equipment by October of this year, an additional 120,000 in 1942, and a further 150,000 by October, 1943. If these cars are added as planned, if traffic should not reach the million-car-week level this October, or if efficiency in car use can be improved, inadequacy in railroad freight service may not result.

BUT until very recently when car production was given a modified priority for steel, car builders have had such difficulty in getting materials that actual delivery of cars may be hampered. Moreover, "bad-order" or unserviceable cars are at a practical minimum so that railroads will be unable to obtain many more serviceable cars from this source. And normal retirements of cars will probably not be less than 50,000 cars per year. Furthermore, with the defense program getting well under way and with ships being transferred from domestic trade to naval and foreign transport, there seems to be a strong indication that the

demand for railroad service will rise above the million-car mark. And unless the defense authorities, the Interstate Commerce Commission, and the American Association of Railroads deal vigorously and effectively with car use by shippers, the very increase in traffic and the unusual character of war-time business may impede full loading of cars and prompt loading and unloading.

Some question exists also as to the adequacy of motive power. During the peak load of October, 1940, the motive power reserve was in the neighborhood of 10 per cent. Although some additions have been made to the supply of locomotives since then and many others are on order, the total additions to be expected by next October are not high enough to make a noteworthy change in locomotive capacity. When it is considered that approximately 69 per cent of all steam locomotives are twenty-one or more years old, and that the construction of new locomotives takes time and competes more directly with defense production than cars, the problem of motive power is one which should cause more concern than has been the case.

An important disturbing factor in the present transportation crisis, and one which is often overlooked, is the fundamentally disunited character of the American railroad system. To be sure, the railroads have standardized road and equipment and have worked out coöperative methods of operation so that they interchange traffic over many roads with exceptional efficiency and dispatch. But the railroad system is still made up of several hundred companies, although some eighty large organizations, managerially independent of each other, handle the bulk of railroad traffic. Each of these systems has its own road, equipment, managers, workers, financial set-up, and interests in furthering profitable operation. The competition of many of these systems with each other and the recognition that each must rely for its existence upon profitable operation naturally make it necessary for the railroads to purchase only the equipment they need, to route traffic so that the originating road may obtain the most lucrative haul, to insist upon return of equipment from other lines as soon as possible, and to guard jealously such natural advantages as favorably located lines and terminal facilities. Not only is this lack of unity prevalent in the railroad industry but it exists on an even larger scale in the transportation industry generally. Numerous independent companies own the other forms of transport—such as pipe lines, motor carriers, and water carriers—and few companies have very great ownership interest outside their mode of transport.

The lack of unity in the American transport system, while conducive to stimulating competition, does not contribute to an "all-out" effort for the most efficient transport. The altogether understandable solicitude of managers for the financial welfare of their own company, the existence of well-maintained and equipped railroads alongside much poorer companies, and the competition-borne lack of full coördination of transport make difficult the task of pooling line and equipment of all kinds of carriers so as to obtain the most efficient movement of traffic.

That this lack of unity is due, in large measure, to government action in the past is of little solace. For the government has for years regulated railroads as though they were transport monopolies and at the same time has insisted upon competition between them and other agencies of transport. The government has long encouraged water carriers to compete with railroads, rather than to supplement them. Government policy has restricted railroads in combining with water carriers or motor carriers, and has not even permitted combination of railroads where the effect is "unduly" to lessen competition. Then, too, action of the Interstate Commerce Commission and such legislation as the 1940 Transportation Act have limited the railroads in coördinating their facilities or in consolidating their properties by making it uneconomical to displace labor. While management itself has not taken advantage of economic combination, particularly pooling of traffic and equipment, as much as it might, much of the present disunity in the railroad industry in particular and transportation in general must be laid at the door of short-sighted government policy.

ANOTHER disturbing factor in the present transportation crisis is the rapid rise in costs and its effect upon the ability of railroads to finance themselves successfully. Although the gain in traffic during the past year has brought many railroads out of the "red" and has made for respectable profits for other carriers, earnings before interest and rentals were, on the average, still only 4 per cent on property investment in the first part of 1941 and allowed net income after fixed charges of approximately $250,000,000 annually. In the absence of higher rates, rising costs can easily wipe out this profit. If only half of the wage increase now asked for by railroad labor were granted, the resultant addition to costs from this source alone would be greater than the indicated net income.

With the attitude of the government what it is at present, material increase of railroad rates would probably not be permitted. While rising costs might justify higher rates, the experience of the first World War teaches that one of the most popular places to attack higher living costs is in the freezing of railroad rates. Thus the financial prospect of the railroads is not especially bright in spite of the traffic boom and the squeeze of fixed rates and higher costs may make it increasingly difficult for the railroads to finance added facilities to handle traffic.

OF further concern in the transportation crisis is the problem presented by labor. Skilled railroad work-

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ers are not as plentiful as one might suspect. The lack of railroad employment for the last decade, coupled with seniority rules in the railroad operating departments, has meant that few new employees have been trained for railroad operating tasks and many former workers have wandered into other employments. Moreover, railroad labor, especially in the operating field, has a strong hold on railroad management and public opinion, for a railroad strike is unthinkable and managements have taken pains to make necessary concessions to avoid strikes. Outside the railroad industry, labor disputes interfere with the normal flow of traffic and make for peak loads when they are not always expected. Thus, stoppage of coal workers last April reduced railroad business during that month, but following the strike the movement of coal caused an unnatural load on the rails.

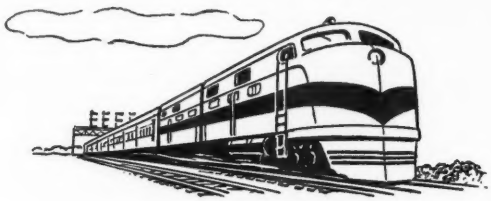
Furthermore, the operating rules which train service employees have been able to force on management—the so-called "feather-bed" rules—have made it extremely difficult for management to improve efficiency except often at prohibitive cost. For example, railroads often have to pay an extra full day's pay to through train employees if they do switching service en route, although it may be in the interest of efficiency and expediency to have such service done. Or the system of dual payments, by which workers get paid by the hour or by the mile, whichever is greatest, siphons off much of the saving of speeding up train runs.

Differences between 1917 and Today

THE problems presented by the present transportation crisis are uncomfortably similar to those which gave rise to Federal operation in the first World War. Are there some distinguishing characteristics, however, which may make government operation unnecessary? Or are there any ways by which government operation may be avoided? In view of the apparent gravity of the transportation situation and the temper of the government to take any steps necessary to keep the defense program moving, the answers to these questions have a lot to do with the probability of government operation during the months ahead.

One of the significant differences between 1917 and today is the experience and knowledge gained by the American railroads and by government officials as the result of the first World War. At that time the railroads were called upon to handle traffic greater in volume than ever before and they were not prepared through advanced planning to do it. The government also had no knowledge of the pitfalls involved in speeding up transportation for war. As a matter of fact, the indiscriminate granting of priorities by a government not well organized for dealing with war-time transport and without adequate planning and timing of movements probably had more to do with the intolerable traffic congestion of 1917 than the volume of traffic itself. If adopted during coming months, shipping priorities will doubtless be granted sparingly and intelligently.

NOTEWORTHY change has also occurred in the organization of railroads to meet the problem of car supply. The Association of American Railroads has a car service division with power, among other things, to



Interchange of Traffic over Railroads

" . . . the railroads have standardized road and equipment and have worked out coöperative methods of operation so that they interchange traffic over many roads with exceptional efficiency and dispatch. But the railroad system is still made up of several hundred companies, although some eighty large organizations, managerially independent of each other, handle the bulk of railroad traffic."

transfer cars from one railroad or territory to another to meet traffic demands, and to direct certain routing of cars. Thirteen advisory boards of shippers, which did not exist during the last war, now give the railroads valuable information on car needs and form an important agency through which to obtain shipper coöperation. The Interstate Commerce Commission has broad powers over car service and routing as the result of the Esch Car Service Act of 1917 and the Transportation Act of 1920. Moreover, the government has created the post of Transportation Commissioner in the Advisory Commission to the Council of National Defense, and has appointed an able railroad executive, Ralph Budd, to the position.

In spite of the present organizations available for help in solving any transport problem which may arise, reliance is still being placed upon voluntary coöperation. The defense Transportation Commissioner has in general limited himself to study of the transportation situation and to undertaking measures for coöperation between carriers in all branches of transportation. One may well question how the authority of the car service division of the railroad association will work out in times of acute traffic stress. What would happen if a carrier insisted that it could not spare equipment ordered transferred by the division, or if a railroad otherwise evaded the division's orders? While the Interstate Commerce Commission has ample authority to order the pooling and allocation of cars during an emergency, the commission has actually not used such power to any great extent, but has relied largely upon the coöperative endeavors of the railroads. The commission has insisted, however, that it is ready to administer these provisions in the event that a serious traffic congestion develops. But the actual administration of car service

would entail a larger administrative organization than now seems available to the commission.

As compared to 1917, the railroad plant of the nation is better organized, maintained, and equipped today. In spite of the competition and lack of coördination now found in the railroads of the nation, combination has made many systems larger than they were in 1917 and numerous coördination projects have nevertheless been put into effect. With the specter of government operation as an alternative, independent railroad managements are far more likely to yield to coöperative methods than was true in the first World War. While railroad maintenance and improvement are not uniformly developed on as high a level at the present time as large traffic burdens might necessitate, owing to the impoverishing years since 1930, railroad management has done an exceptionally good job under the circumstances to modernize road and equipment and to improve operating efficiency.

Locomotives with higher tractive power have been added in the last two decades, although altogether too many engines are obsolete. Larger cars have been built and car space utilized so that the number of units of equipment now available do far more transportation service than the same quantity in 1917.

The improvement of operating efficiency is indicated by the fact that gross ton-miles per freight train hour were twice as great in 1940 as in 1921, average freight train speed was 50 per cent greater, and average miles per car day were likewise increased. In spite of the decline in numbers of cars and locomotives during the last twenty years, the railroads have been expeditiously handling more traffic than in 1917 or 1918 and nearly as much as in 1929.

Notwithstanding the organization, economic condition, or efficient operation of present railroads, and the lessons which have been learned from the first World War, there are still causes for alarm in the present emergency. The railroad system of the nation is still made up of competing private enterprises and managements have the duty to safeguard investors, even though this may cause conservatism in coöperating fully with defense agencies or in enlarging carrying capacity for the temporary peak demands of defense. Question still exists as to whether armament demands may not interfere with the necessary acquisition of new equipment which the railroads have ordered and will order. There is no convincing evidence that increasing gross revenues will keep far enough ahead of costs to maintain the position of railroad credit, especially in view of government competition for capital. Moreover, one cannot be sure that shippers will do all they can to increase loading of cars, diminish the time required for loading and unloading cars, or to limit requests for cars to current and immediate needs.

Measures for the Present Emergency

The very fact, however, that the causes for alarm are so well known should lead responsible persons to undertake immediate and vigorous measures for their removal. It is high time to remove such impediments as exist to railroad coöperation. Require-

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ments of competition between railroads and other forms of transport should be lessened. Impediments to coördination, such as the labor displacement limitations found in the Transportation Act and the decisions of the Interstate Commerce Commission, should be removed immediately. The government might well prepare for more direct steps, probably in conjunction with the Association of American Railroads, to route traffic over the quickest lines, and to set up a scheme of compensating carriers harmed by such action. The temporary need for more freight equipment for national defense purposes could justifiably be financed by the government and given all necessary priority to insure delivery from manufacturers. Immediate attention of government and railroad officials should be drawn to the possibility of increasing rates.

The government might also encourage the railroads in their current attempts to improve labor efficiency by changing some of the make-work and "feather-bed" rules. While the formulation of these operating rules and the institution of changes are theoretically matters for management and labor to iron out, it is an open secret that the influence of leaders in government is often decisive in these matters. The present is no time to tolerate artificial restraints upon efficiency.

RAILROAD and government officials can also enlarge their present efforts to obtain shipper coöperation in efficient use of equipment. By educational programs, by increasing the work week of manufacturing employees engaged in loading and unloading cars, by closely checking upon demurrage, and by carefully watching customers' requests for cars to see that cars are available when needed but not before, efficiency in the use of equipment could be vastly improved. After all, a one-day decrease in the average "turn around" time of railroad freight cars would be the equivalent of adding 100,000 cars to the available supply; and an increase of one ton per car in loading would be equal to another 40,000 cars.

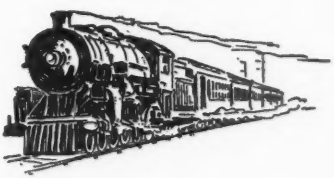
Unless vigorous measures are taken, traffic congestion can occur. The real flow of finished war goods to ports and camps has no more than begun. Although coördination of all modes of transport would be valuable, the bulk of national defense traffic must be carried by the railroads. While it may be unreasonable to expect the railroads to handle smoothly such large and sudden increases in traffic, the government will

not likely permit any faltering in expeditious railroad operation. With the recognition of the factors which give rise to alarm, prompt measures can avoid government operation of the railroads.

TEMPORARILY increased car service controls are likely to be less disruptive than outright government operation. Even though additional facilities and arbitrary routing of traffic may involve some expense to the government, such an expenditure would surely be small in comparison to the total cost of the defense program and would be much less than the cost of government operation.

The time is also ripe to take bold and comprehensive steps to recast government regulatory policy in a mold more conducive to unified and efficient transport.

Should the government grant financial aid and legislative help, the railroads could doubtless handle the defense transport requirements under private ownership better than could ever be possible under a hastily organized system of government operation.



"Railway" or "Railroad"

"PURISTS in some parts of the world have long made a tenuous distinction between 'railway' and 'railroad,' and among them have been the railways of North America themselves. Some have contended that the company is the railway and that the tracks are the railroad; others have argued that it is just the other way about. The men who work on them, for the most part, have never been able to perceive the slightest difference in the two terms.

"Now a canvass made by the Santa Fe reveals that, out of 137 lines in the United States, 65 use the word 'railway,' while 69 prefer 'railroad.' Either word is generally believed to be right. But, like the 'tomato' controversy, each will no doubt have its defenders for proper usage. But what does it matter?"

—Hamilton Spectator.

Wire and Wireless Communication

WHILE the telephone companies were wondering what would happen in the conference committee over differences between the House and Senate on taxing telephone bills, Chairman Fly of the FCC gave the communications industries something new to worry about in the way of tax innovation. The House bill would have imposed a tax of 5 per cent on monthly telephone bills; the Senate boosted this to 10 per cent.

Meanwhile, the telephone companies, which had made virtually no protest against the original 5 per cent House proposal, rallied for an eleventh hour fight on the 10 per cent tax, in the hope that the conference committee would restore the House version.

Chairman Fly's suggestion which, of course, could not be incorporated at such a late hour in the pending tax bill, came somewhat as a surprise. True, Chairman Fly in his testimony before the House Ways and Means Committee, advocating the elimination of a 5 to 15 per cent Federal tax on radio broadcasting time sales (which was approved by the House but eliminated by the Senate), had suggested that a "cost of regulation" tax of some kind was being worked out by the FCC for radio and other communications facilities as well.

At his press conference on September 2nd, Chairman Fly said that he may call industry representatives of all forms of communications carriers (radio, wire, telephone, but not amateur) to participate in an informal round-table discussion of a franchise tax proposition. He added that there was no immediate hurry about this but any plan the FCC may have to offer will probably be made available for Congress by the time the next revenue bill is drafted.

The Treasury and the FCC have been working together on the proposed radio time sales tax; so in all likelihood they have been getting up preliminary data for the suggested "cost of regulation" tax on all forms of communications.

* * * *

A PRIORITIES liaison committee has been created by the Defense Communications Board to study material and equipment requirements for all types of wire and radio communications, and to make reports relative to priorities for these services. This action is primarily for the purpose of affording coöperation and assistance which may be required by the Office of Production Management. In releasing its announcement DCB said: "While we are gratified to know that a priority status has been assigned to repair and maintenance materials, we feel that it is equally, and in many cases more, important to provide a high order of priority for new materials and equipment."

A streamlined plan to grant priority assistance for repair work in certain essential industries, including telephone and telegraph companies, was announced September 9th by Donald M. Nelson, director of priorities. The new plan, effective immediately, provides machinery under which priority status for repair work in twenty industrial classifications

can be obtained, so that firms and agencies in these classifications may obtain repair parts promptly.

The revised scheme permits qualified producers or suppliers to apply a preference rating of A-10 to deliveries of required repair parts by endorsing a special statement on purchase orders, certifying that the material being ordered is for repair work under the terms of the order, P-22. Repairs are defined as the minimum inventory of material required for repairs to meet actual or imminent breakdowns.

* * * *

At least 5,000,000 pounds of metals vital to United States defense needs are being saved by the Bell telephone system and its manufacturing arm, the Western Electric Company, it was announced on September 7th. The annual saving includes nearly 1,700,000 pounds of aluminum, enough of the tough, light metal to build 275 fighter planes or half as many bombers.

The metal substitution program of the Bell system, made possible by research, long-range planning, and readjustments in manufacturing, will divert for defense use in 1941 almost a third of a million pounds of nickel, more than 3,000,000 pounds of zinc, and 8,300 pounds of magnesium, in addition to the aluminum saving. About sixty-five tons of aluminum, or 130,000 pounds, is saved by replacing the aluminum in the dial finger wheel on automatic telephones with steel. Western Electric is also utilizing a thermo-plastic to replace to some extent a zinc aluminum alloy in the housing for the combined telephone set.

Supplementing the materials substitution program is a reclamation project carried on through the Nassau Smelting and Refining Company on Staten island, which last year supplied the Bell system with more than 42,000,000 pounds of metal, obtained chiefly from nonferrous metals in outworn equipment, structures, and supplies junked by the operating telephone companies.

Three classifications have been developed in the substitution program of the Western Electric Company. Class 1 consists of materials for which substitutes may be introduced without extensive investigation. As an example, the use of zinc has been materially reduced by coating outside plant hardware with lead instead of putting the products through a galvanizing process.

In Class 2 are materials for which substitutes may be found, but further research is necessary to determine whether their use is practicable. In this group studies are being made in the use of lead foil instead of aluminum for condensers.

Class 3 includes materials for which engineers have not yet been able to find working substitutes, some of which it may be impossible to replace. There is no known substitute, for example, for the zinc electrode in a dry cell.

* * * *

The traditional banker relationship between the $5,000,000,000 American Telephone and Telegraph Company system and the House of Morgan—dating back to 1906—was severed recently with the disclosure by Walter S. Gifford, president of AT&T, that the Bell system would resort to competitive bidding in a forthcoming $95,000,000 financing operation.

J. P. Morgan & Co., and in recent years its successor underwriting firm, Morgan Stanley & Co., Inc., have participated as underwriters and syndicate managers in approximately $2,000,000,000 face value of American Telephone financing.

Mr. Gifford's decision to put the next AT&T issue on the auction block was a complete surprise to the financial community. Even officials of Morgan Stanley & Co., Inc., when apprised of the action, declared that they knew nothing whatsoever about it and had not been informed that a change in the traditional procedure was at hand.

AT&T's decision to accept competitive bidding for the sale of its securities apparently was a voluntary development since the Federal Communications Commission, which has certain regulatory jurisdiction over the Bell system, had not issued any orders to that effect. Some

time ago, the Securities and Exchange Commission, which regulates the electric light and power industry, promulgated a ruling calling for compulsory competitive bidding in the sale of public utility securities.

Last April Mr. Gifford told stockholders of AT&T that he had a "completely open mind" on the subject of competitive bidding for the system's obligations. He indicated, however, that he did not intend to adopt such a policy until such time as the practice had had an opportunity to be tested. Since there have been few competitive bidding sales under the SEC ruling to date, his decision to "switch over" caused considerable conjecture in the financial community. Only two months ago AT&T avoided the "competitive bidding" issue by giving rights to stockholders for subscription to $234,000,000 of new 3 per cent debentures, the proceeds of which were to be used to aid in financing the huge construction program of the Bell system in meeting the requirements of the national defense program.

* * * *

RETURNING to New York city after settlement in Washington of the dispute between the Western Electric Company and the Association of Communications Equipment Workers, Henry Mayer, counsel for the independent union, disclosed recently that the organization had given up its demands for a "maintenance of membership" clause at the suggestion of Dr. John Steelman, director of the United States Conciliation Service.

Mr. Mayer said Dr. Steelman had advised the union negotiators that the defense emergency and the threat of a nation-wide telephone tie-up involved in the Western Electric controversy made it unwise for the union to press for a "maintenance of membership" guaranty after agreement had been reached on all points affecting wages and working conditions.

Dr. Steelman's position contrasted with that taken up by the National Defense Mediation Board in the dispute at the Kearny, New Jersey, yard of the Federal Shipbuilding & Drydock Company. President Roosevelt took over that plant after the company had refused to accept the mediation board's recommendation that present and future members of the CIO Industrial Union of Marine and Shipbuilding Workers remain union members in good standing as a condition of holding their jobs.

In the Western Electric Case, in which Mr. Mayer's union claimed the adherence of 85 per cent of the 9,000 installation department workers covered by the negotiations, the union obtained wage increases and adjustments totaling $1,500,000 a year and provisions for the arbitration of all disputes.

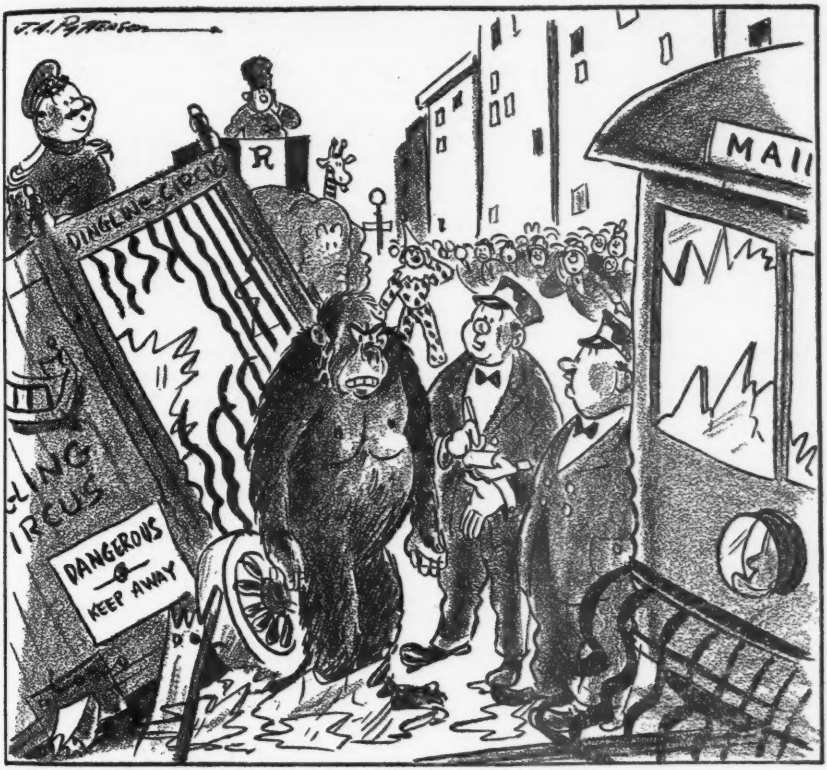
Despite these concessions, the independent group was determined to hold out for some form of union security until Dr. Steelman made his plea in the name of national defense, Mr. Mayer said.

He said officers of the National Federation of Telephone Workers had served notice at the conciliation conferences in the capital that 150,000 telephone operators and service men would refuse to pass through picket lines established by the Western Electric workers.

* * * *

NERVE center of Britain's home defense system is a signal station at Army headquarters somewhere in England. From it radiates a secret network that has been perfected since Dunkerque and which extends to every nook and corner of the United Kingdom. By means of it the General Staff could get into immediate touch with almost any unit of the home forces, cutting out if need be the normal link with the various commands. A special correspondent of *The London Times,* who was allowed to visit the station, thus describes it:

The underground labyrinth of GHQ, with its mysterious galleries, red lights, and general air of secrecy, is a little reminiscent of the control rooms of a Maginot fortress. The signals station is clearly one of its most vital parts for



"BETTER TAKE HIS NAME FOR A WITNESS, MIKE"

the link it must maintain between the operations room and field formations. So many means of communication have been devised that the chances of all being put out of action, I was assured, are remote.

Military communications to some extent use post office circuits from which direct private lines are maintained by Army specialists, many of whom were post office technicians of high skill. The usual means of transmitting and receiving messages is by teleprinter. Many of these machines, in direct communication with the commands, are installed in the teleprinter room, where an hourly check is made on a switchboard—more frequently in periods of heavy air raids—to insure that each line is working.

Then the station has its own telephone exchange, controlled by women operators from the post office, with more private lines to the commands, the war rooms of the Cabinet, the Admiralty and War Office, the Ministries, and so on. One section of the switchboard, labeled significantly "combined operations panel," is set apart for actual battle, and to this only a limited number of officers of the General Staff would have access.

Many lines are reserved for the commands of the Royal Air Force. Every precaution is taken against the use of the telephone for the transmission of false messages. Should the telephone system break down entirely, there is a reserve system of wireless transmission.

Financial News and Comment

By OWEN ELY

Transit Earnings Gaining, But Traffic Problems Loom

WITH another World War in progress, transit executives of the older school will doubtless recall with dismay the down-trend of the industry in 1914-20 as illustrated in the accompanying chart (page 419). Costs and wages soared 120 per cent during that period, while fares showed little increase until 1919, and in 1920 were only 37 per cent over the 1914 level. Moreover, the industry had been slightly weakened by growing competition from the automobile and lowered efficiency due to traffic congestion.

With over one-sixth of the traction companies bankrupt or in receivership, the plight of the industry was recognized by President Wilson, who appointed a commission to investigate problems of the industry.

Fortunately, fares continued to rise in 1921, while commodity prices (though not wages) dropped sharply. The industry was able to readjust itself somewhat, net operating revenues in 1922 being higher than in 1917. From that year on, however, motor competition became a still more serious problem and gross revenues of electric railways dropped at an accelerating rate. The 1937 total was lower than that of twenty-five years previous, and net revenue was down about 62 per cent. This decline was partially offset, however, by rising earnings from motor bus operation. Operating income after taxes (in millions) for the two branches of the industry compared as follows for 1927 (earliest date for which motor bus figures are available) and 1940:

	1927	*1940*
Electric railway operations	$174	$52
Motor bus	D1	16
Total	$173	$68

The 1929-32 depression hit the transit industry a third staggering blow. Revenues dropped about one-third in the period 1927-32, while net after taxes was down 52 per cent. The industry recovered only a modest amount of this lost revenue in later years, and the steady increase in wages, taxes, and material costs —with average fares virtually frozen around the 8-cent level—had a particularly severe effect during 1937-8. Following is the record (trolleys and busses combined) of the past five years (millions of dollars):

Year	*Gross*	*Net After Taxes*
1936	$678	$102
1937	686	79
1938	651	53
1939	665	63
1940	680	68

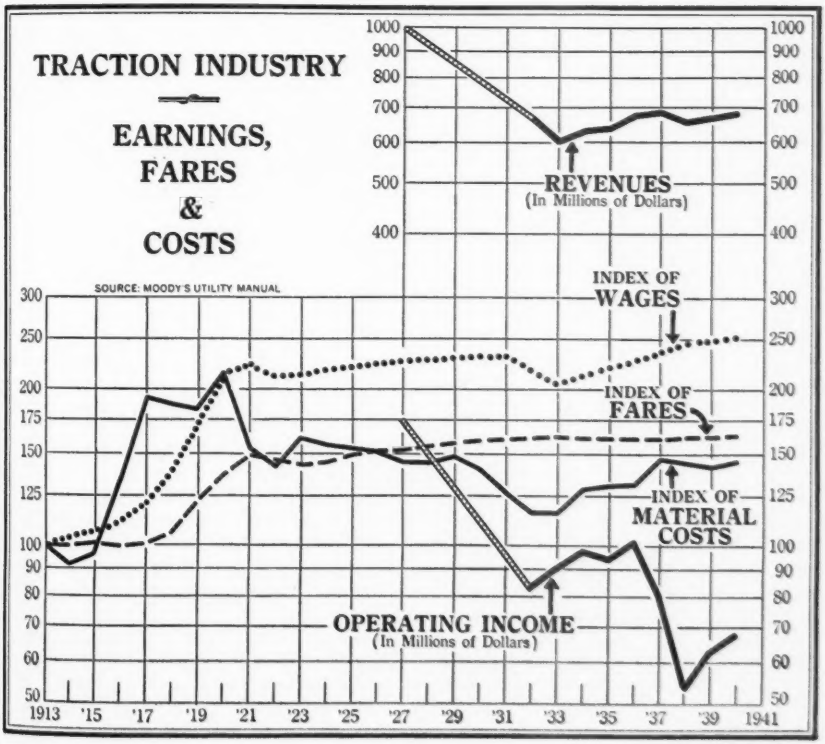
IN 1940, despite a gain in taxes, the industry was able to increase operating income nearly 10 per cent. (Net income after charges is not available.) The outlook for 1941 seems quite favorable: Net revenues in the first half increased 5 per cent while net revenues after depreciation gained 14 per cent. In some "defense" cities like Wilmington, July traffic was up as much as 65 per cent, and some transit companies are hard put to it to obtain new equipment, since they can't obtain priorities on deliveries. Next year increased costs may begin to gain the upper hand but in this respect the industry should be in much better shape than in the previous war; fuel costs are un-

likely to skyrocket, and wages are already relatively much higher than in 1914.

During 1940 the huge New York city traction companies, the Interborough and B-MT, passed over to municipal ownership after many years of negotiation. The result proved generally favorable for the security holders, particularly for B-MT and BQT preferred stock "holdouts" who were able to realize large profits. Third Avenue Railway bonds have attracted speculative interest at intervals in the past year because of the campaign to motorize the company's lines, but New York City Omnibus has shown a declining trend due to increased wages and lower earnings.

Some progress is reported in working out a reorganization of the badly muddled Chicago transit situation. Philadelphia has recently completed the reorganization of its system and has embarked on a modernization program. The Twin City situation (Twin City Rapid Transit is one of the few tractions still listed on the big board) shows little change, although earnings are slightly better. The perennial question of municipal ownership in San Francisco seems to be coming to a head.

The problems facing the traction companies require a high caliber of management for their solution, but the future of the industry should not be regarded too pessimistically. At the moment net earnings are on the upgrade, although this trend might be reversed in the future and current benefits are not uniform. It may be necessary in isolated cases for municipalities (which are better able to



CORRECTED DATA FOR STREAMLINE TRAINS

	No. of Trains	*Revenues (Thous.)*	*Train Exp. (Thous.)*	*Ratio Expense to Revenues %*
Union Pacific	1	$139	$126	91%
U. P. & N. W.	5	3,628	2,005	55
U. P., S. P. & N. W.	2	1,656	709	43
Southern Pacific	2	212	150	71
Southern Pacific	2	1,816	492	27
Burlington	8	3,959	1,384	35
St. Paul	2*	1,310	324	25
North Western	2	715	377	53
Atchison	9	3,860	1,623	42
Rock Island	7	1,725	640	37
Illinois Central	1	279	159	57
Gulf M. & N.	2	227	158	70
Baltimore & Ohio	2	1,155	457	40
Seaboard Air Line	1	281†	81†	29
New Haven	1	105	74	71
B. & M. and M. C.	1	229	93	41
Totals	48	$21,296	$8,852	42%
Average per train		$ 444	$ 184	42%

*Two trains omitted.
†Part of year only.

shoulder the problem of increasing wages *versus* fixed fares) to take over local transit companies. In other cases new and attractive equipment can help regain traffic and bolster earnings, as already demonstrated by many companies. The development of the new PCC car, of which about 1,500 are in use and 500 more on order in a number of cities, gives assurance that street cars will remain in service on heavy-duty lines for many years to come, although the general trend to busses and trolley coaches will doubtless continue. In the interurban field busses continue to make inroads, but modernized electric lines which can handle freight as well as passenger business have a fair chance of survival. Important centers still serviced by interurban lines include Philadelphia, Chicago, San Francisco, Los Angeles, and others.

While the defense program may raise new problems, it is temporarily affording a sharp stimulus to many transit companies, and helps to demonstrate the essential function of what has sometimes been regarded as a "vanishing industry."

Railway Passenger Losses—A Correction

IN the article, "Must Railroads Lose 84 Cents on Each Passenger?" (FORTNIGHTLY, August 14th issue) the table on page 213 listing revenues and expenses of streamline trains (abstracted from a report by Coverdale & Colpitts) was in error due to transposition of a column of figures. A corrected table is published herewith. The revised operating ratio of 42 per cent for "out-of-pocket" expense for the streamline trains (compared with the incorrect figure of 58 per cent) further improves the splendid showing of these modernized trains as compared with the old-fashioned type of passenger train.

Unfortunately, it is impossible to make an accurate statistical comparison of the two types of train. The Coverdale

& Colpitts study usually lists as "train expenses" only wages of crews, fuel, lubricants, water, train supplies and expenses, locomotive repairs and passenger car repairs; and a deduction is also made for the usual net loss on dining-buffet service (the tabulation is not uniform in all cases). It is not clear that these items cover *all* subaccounts for passenger transportation and equipment-maintenance expense under the ICC classification; apparently they omit depreciation and some other items. Overlooking these omissions and assuming that the 42 per cent ratio compares with the estimated 89 per cent ratio of transportation and M. E. costs for the United States passenger service as a whole in 1939, it would appear that the streamline trains saved about 47 cents (per dollar of revenue), bringing the estimated average over-all cost ratio down from 160 per cent to 113 per cent of revenues for these trains. While these ratios are highly approximate, the conclusion seems to remain that, despite their great operating economies, the majority of the streamline trains operated "in the red" in 1939 if fixed charges are included in costs. Perhaps with further analysis and refinement of available statistical data this opinion may face revision. In any event the current rapid increase in traffic should erase many red ink figures for the passenger service, and make the showing of the streamline trains still more impressive. Further comment will appear in a later issue.

A Case for Utility Equities

LAZARD Frères & Co. have issued a 30-page brochure entitled "A Case for Electric Utility Company Equities." The five chapters discuss the unfavorable effects of government power policies, the future distribution to the public of utility operating company stocks, long-term growth prospects, the future trend of revenues and costs, and methods of evaluating operating company equities.

Analyzing the dividend records of representative utility, industrial, and rail stocks, the firm shows that the utility record since 1929 is more stable than the industrial, and far better than the railroad showing. The income on utility stocks (based on Moody's Dividend Index) never fell more than 38 per cent below the peak amount for the period, while industrial dividends dropped as much as 71 per cent, and rails 86 per cent. Compared with the 1929 level of dividends, utilities in 1940 were 21 per cent lower, industrials 34 per cent, and rails 78 per cent.

In the chapter on "Government Power Policies" it is pointed out that proposed legislation might confer even broader powers on government agencies than have previously existed; the Columbia Power Authority, under the present bill, would have the right to *condemn* entire electric systems, and would give local public utility agencies (which it may promote) priority in contracting for sale of power from Bonneville and Grand Coulee. The increasingly severe regulations of the SEC and the FPC with respect to depreciation, readjustment of capital structure, geographical integration, etc., are discussed in some detail.

Regarding the outlook for growth, the present enormous defense requirements —production of aluminum alone may require 12,000,000,000 kilowatt hours—are analyzed, together with such offsetting factors as increased interconnection, national daylight saving, continuous factory operation, civilian rationing, etc. The FPC program for 1943-46 (discussed in this department in the August 28th issue, pages 292-6) receives only brief mention, although we believe it has an important bearing on future utility capitalization and earnings.

THE section on earning power presents a table of operating ratios (in percentage of gross), from which we selected the accompanying data. Lazard Frères point out one fact, perhaps not generally appreciated, that interest coverage was greater for the industry in 1940 than in any of the ten preceding years—2.73 after depreciation, 3.55 before depreciation.

Regarding trends during the previous World War, the study notes that the industry had to undertake a tremendous construction program without adequate preparation, at a time when costs were rising rapidly. The administration is anxious to avoid the mistakes and excesses of the previous war with respect to prices, and public service commissions are in a better position to act promptly if rate increases are warranted. (In this connection, it is interesting to note that Federal Power Commissioner Manly, addressing members of the National Association of Railroad and Utilities Commissioners, has suggested that emergency gains in revenues should not be considered as a basis for downward rate adjustments, and that any increased profits from the defense program should be used to build up depreciation reserves. See page 427.)

Regarding increased wage costs, the study estimates that hourly utility wages are currently about 30 per cent above those in manufacturing industries, and employment steadier, which gives the utilities some measure of protection against labor demands; moreover, an increase of about 2½ per cent in their revenues should be enough to offset a 10 per cent increase in over-all labor costs.

As to fuel costs, it is emphasized that the industry is in a far stronger position than during the other war, due to (1) the great reduction in fuel consumption per kilowatt hour, (2) the very large increase in coal-producing capacity, (3) unlikelihood of a car shortage (which in the other war forced many utilities to buy fuel at premiums wherever it could be obtained), (4) long-term fuel purchase contracts, and (5) for some companies automatic rate surcharges to compensate for higher fuel costs. Since transportation cost is a large factor in total fuel expense, mine costs would have to rise quite sharply to effect a 10 per cent rise in fuel costs; and it is estimated that a one per cent rise in revenues would about offset the latter.

WHILE taxes represent the principal cost problem at present the Lazard

OPERATING RATIOS
(In Percentage of Gross)

	1929	*1934*	*1939*	*1940*
Operating revenues*	100.0	100.0	100.0	100.0
Operating expenses	39.0	37.1	37.2	37.4
Depreciation	8.4	10.4	11.6	11.6
Taxes	9.7	14.0	16.4	18.1
Total operating revenue deductions	57.1	61.5	65.2	67.1
Operating income (electric)	42.9	38.5	34.8	32.9
Other departments	4.7	4.1	2.7	2.6
Nonoperating income	3.5	1.9	3.1	2.9
Gross corporate income	51.1	44.5	40.6	38.4
Interest and amortization	16.8	20.6	14.7	13.4
Other deductions	2.1	1.1	0.8	0.7
Total fixed charges	18.9	21.7	15.5	14.1
Net income	32.2	22.8	25.1	24.3
Fixed charge coverage (before dep.)	3.15	2.53	3.36	3.55
Fixed charge coverage (after dep.)	2.70	2.05	2.61	2.73

*Exclusive of revenue derived from sales to other private utilities for resale.

LIFE INSURANCE COMPANY INVESTMENTS

	Year 1941 to Date	*% of Total*	*Year 1940 to Date*	*% of Total*
Mortgage Loans:				
Farm loans	$57,998,200	2.4	$58,848,396	2.8
City property loans	400,497,639	16.6	326,886,658	15.4
Railroad Securities:				
Bonds	166,678,710	6.9	202,957,722	9.6
Stocks	2,981,084	0.1	362,554	0.0
Public Utilities:				
Bonds	586,351,002	24.3	305,721,157	14.4
Stocks	5,327,728	0.2	5,195,831	0.3
Governments:				
U. S. govt. bonds	511,447,498	21.2	725,042,779	34.3
Canadian govt. bonds	70,741,275	2.9	24,018,923	1.1
Other foreign governments	4,619,092	0.2	1,534,422	0.1
State, county, municipal	114,002,541	4.7	137,973,368	6.5
Miscellaneous:				
Bonds	476,459,410	20.0	317,964,621	15.0
Stocks	12,191,007	0.5	9,078,428	0.5
Totals	$2,409,295,186	100.0	$2,115,584,859	100.0

study brings out a point not generally appreciated, that two-thirds of utility taxes are "other than Federal" and that these taxes are unlikely to increase substantially, since municipal services will hardly expand much during the national emergency, and unemployment relief is diminishing. An increase in gross revenue of about 3½ per cent is sufficient, it is estimated, to offset a 50 per cent jump in Federal taxes above the present 24 per cent level. (This year's increase will be at least 25 per cent, and more if excess profits taxes come into the picture.)

Fixed charges can hardly be reduced much more by refunding operations, they think, but heavy sinking funds and serial maturities (or replacement of debt with common stock in some cases) will prove helpful in this respect; on the other hand, some new debt may be incurred for new construction. (In our opinion, the latter possibility is given insufficient consideration.)

Summarizing the discussion of earnings, it is concluded that "the business of electric utilities and the relationship of costs to revenue are such that selected common stocks of well-managed companies enjoy the consistent protection of ... high quality earning power."

In discussing the factors to be employed in evaluating common stocks of operating companies, capital set-up, depreciation rate, amount of reserves, rate of return permitted, the possibility of earlier "write-ups" in capital account, the level of rates, etc., are mentioned as important factors in comparing and testing price-earnings ratios and yields, and as determinants of quality. Data are presented showing the dividends and price records for 1929-40 for twenty-five operating companies. The brochure, stressing as it does the more optimistic side of the investment picture, is a valuable addition to the current literature on utilities.

Insurance Companies Increase Utility Holdings

ACCORDING to data published by Dow-Jones (see accompanying table), life insurance companies in 1941 to date have placed nearly one-quarter of their funds in utility bonds. The amount purchased was $586,351,002, an increase of about 95 per cent over last year. Total funds invested increased about 13 per cent over 1940 (to date).

What the State Commissioners Are Thinking About

Excerpts and digests from the opinions expressed in reports and addresses at the annual convention of the National Association of Railroad and Utilities Commissioners in St. Paul, Minnesota, from August 26th to August 29th, 1941.

On Transportation

THE dread sequence of events chronicled by Poor Richard must not happen here "for the want of a nail for the shoe of the iron horse," in the opinion of Transportation Commissioner Ralph Budd of OEM. Excerpts from his speech follow:

"Traffic had been increasing for about a year at the time the (Transportation) office was established, and early consideration was given to the probable further increase in traffic and how rapidly it would come. For this purpose the Bureau of Research and Statistics of the Advisory Commission, the Bureau of Railway Economics, the Shippers' Regional Advisory Boards, and others have prepared estimates of future demands from time to time. It is well known that all such estimates have been revised upwards to keep pace with the enlarged defense program. Knowledge of what to prepare for continues to be most important, but it is also most difficult to determine with any degree of accuracy.

"Speaking now of railroads, because they are handling about two-thirds of the country's traffic, on June 1, 1940, they owned a total of 1,648,696 freight cars. In July, 1940, it was decided that the ownership should be built up to 1,700,000 cars by October 1, 1941. Normally, about 80,000 cars are retired every year through age or accident, but it was decided to repair as many of the old cars as practicable so that they could be used for four or five years longer. In this way retirements have been reduced by about one-half. The new car-building program in order to raise the ownership to 1,700,000 called for about 100,000 new cars by October 1, 1941. From June 1, 1940, to June 1, 1941, orders were actually placed for 112,320 cars. Owing to inability to obtain material for carrying out this car-building program, I regret to say that on October 1, 1941, the program will fall about 20,000 cars short.

"EARLY this year, plans were made to bring the total railroad ownership to 1,800,000 cars by October 1, 1942. If this goal is to be reached, about 160,000 new cars must be built between October 1, 1941, and October 1, 1942.

"There is a phase of the program for better utilization of equipment in which the shippers and the regulatory bodies are not able to participate and cannot be expected to assist or coöperate, and that is the maintenance of the properties in good condition so as to render full and efficient service. This is a duty of the carriers themselves.

"In ordinary times an increase in traffic such as has taken place would be provided for by them without any question. At present a serious complication has arisen through the control of steel and other metals by the issuance of government priority orders. This has interfered seriously with carriers of all types in obtaining materials and supplies for current maintenance, and for making necessary additions to their plants. I have already referred to the inability of the railroad car builders to keep up the car-building program. This

program is now being carried on at about one-half the scheduled rate set up to meet the needs of anticipated traffic. That lag means that the proposed expansion to 1,800,000 cars by October 1, 1942, will fall 100,000 short unless some way is immediately found to supply more steel, iron, lumber, and other essential material to the railroads and to the car builders. New locomotives are also badly behind promised delivery dates. Deliveries of maintenance and repair parts not only for cars, but also for locomotives, and to a necessary extent for repair to tracks, bridges, and structures have slowed down and now threaten seriously to impair the operation of the railroads. It is true the roads have not failed yet, and their record to date indicates that they will not fail if arrangements can be made promptly for securing the necessary material, but otherwise failure is inevitable.

"No one unfamiliar with the almost insuperable difficulties of allocating essential materials to the hundreds of thousands of users engaged in all degrees of defense work, can appreciate the priority problem. Upon its solution, however, depends the continued success of the national transportation system.

"If our industries as a whole may be considered as a vast factory, the various transportation agencies constitute the conveyors, and it is as necessary to maintain them as it is to keep the conveyors in good condition in the factory line.

"The great precision of our mass production methods enables this national production line to extend from one end of the country to the other. Some parts of the same bomber or tank or shell or automobile may be made in the East, some in the North, some in the South, and others in the West, but when all of them finally are brought together in the assembly plant the finest machine, involving the most precise integration, will result.

"We must not permit any dread failure to happen for the want of A Nail for the Shoe of the Iron Horse."

On Emergency Power Problem

Moves of the Federal government to "collectivize" private industry "in the holy name of defense and the national emergency" were criticized by Chairman Walter McDonald of the Georgia Public Service Commission.

Chairman McDonald said that recent regulatory decrees of the Federal Power Commission and the Interstate Commerce Commission had in them "nothing new of economic value—which has not been considered and planned by industry itself. I can see in it nothing more than the long arm of bureaucracy ever grasping for the greater centralization of power with the resultant destruction of local self-government; and all this in the name of national defense."

McDonald said there was no possible future power shortage or problem in Georgia or the South which cannot be solved without the benefit of Federal aid, "and there will be no real problem in our section unless it is deliberately created by the further uneconomical location of temporary electric reduction plants."

"We hear and see entirely too often suggested Federal interference as a panacea for real and imagined ills," he said.

McDonald said that the conduct of the affairs of the TVA in the South's power emergency during the early summer, "provides ample proof of the greater facility and ability of the state authority to cope with any emergency," or problem in the power industry.

The speaker pointed out that more than 85 per cent in territory and usage of electric service in Georgia is served by the Georgia Power Company, "which is excellently managed," and through proper foresight and planning, capacity has been added in Georgia in advance of actual load requirements.

Comparing the recent drought experience of power agencies in both Georgia and Tennessee, he said:

"Tennessee was just as dry as Georgia and even more dependent on hydro. TVA had encouraged the location of and assumed the responsibility for supplying the defense furnaces but not a single step was taken beyond the holding of meetings and the making of plans and proposals looking to the conservation of badly needed energy. Nature provided the relief in advance of the inauguration of a single one of those plans or proposals. After we were out of the woods, and feeling good over the job we had done, along comes Mr. Olds' commission [FPC] and proposes a revised multiple 'Little TVA' program with an added division designed, as I see it, to collectivize, or perhaps it would be more polite to say 'nationalize' the industry in the holy name of defense and the national emergency. And incidentally, he would frustrate state regulation by preempting the field at one fell swoop and at the same time supersede private management, although it has already been demonstrated that remote control similar to that proposed could not solve the problems created by a local drought. . . .

"There are individual proposals in the way of managerial interference that are unsound and unjustified, such as the proposed steam generating station as Chattahoochee, Florida. The over-all long-range program provides nothing in excess of what the industry had already planned, is already doing, and which

it can be counted upon to carry out in normal development under private ownership and control."

Chairman McDonald said that the OPM power director "need only to examine the log sheet of any of the major utilities in my section in order to realize that complete 'pooling' in this area has already taken place."

He declared that there is no immediate power problem in Georgia or in the South or any future problem with which the South is unable to cope.

On Regulatory Effects of Emergency

ORMOND R. Bean, commissioner of public utilities of Oregon, discussed two questions: (1) What provision should be made for amortizing plant investment made necessary by the defense emergency; (2) what extent should increased utility revenue resulting from defense business be used for rate adjustments?

The speaker observed that in his own state there had been few large or unusual investments by utilities in facilities for direct defense activity. Therefore, the first question would be applicable principally to expenditures that have been made by utilities to provide regular service in and adjacent to areas involved in large defense projects. Some of these will remain a permanent part of utility development. In other cases, utilities will be confronted with a sudden and expensive surplus of facilities when the defense program is terminated.

Furthermore, this "defense investment" is concentrated in certain areas which tends to unbalance the plant investment of utilities on a system-wide or statewide basis. In other words, the *post bellum* regulatory problem will be spreading of the rate base almost throughout the state that normal operations cannot justify. He stated:

"These utility expansions require capital expenditures which in most cases are made on an emergency basis. They may affect the entire financial set-up of some of the smaller utilities and may become of such importance that they are the determining factor in making or breaking an otherwise solvent utility.

"In connection with the installation of telephone facilities at large cantonments the Federal government is offering protection in the way of advancing funds for the purchase and installation of such emergency equipment. This, in part, is to be paid back by deduction from revenue billing over a 5-year period, any unpaid balance to be considered a termination award so that the utility will be relieved of the necessity of financing its improvements and will be protected from the sudden termination of the defense effort.

"However, in some instances the utility will be required to make substantial investments leading up to such Federal projects, and these extensions will be financed by the utility, with resulting increase in capital investment and with practically no increase in business except as occasioned by the existence of the project, and that increase in revenue will be absorbed by the arrangements under which the investment in the project is financed."

COMMISSIONER Bean observed that all developments seem to go in cycles and the utility industries have been no exception. He pointed to the era of expansion prior to 1929 and the wave of criticism against private utility management which resulted from political investigations during the early thirties. "Certain groups were formed," he said, "to snipe at utilities and since the early years of the depression the utilities have been the target of many aspiring candidates to public office."

During these years the utilities had a real struggle. Patrons were deserting them; new money was difficult to obtain; politicians were persecuting them; and the public distrusted them. Their plants were not expanded and management morale fell to a day-to-day philosophy. When the depression began to lift utilities were forced to get along with small return and continue under political pressure the trend of rate reduction. This happened at a time when expansion seemed necessary. Commissioner Bean continued:

"Then, the defense boom came along. This speeded up the climb out of the depression. Patrons came back, expansions became necessary, revenues increased, net income increased, raising of capital became necessary. This placed the utilities in a position where they are now facing an increased income, an increase in operating expenses, an increase in capital investment caused by defense necessities, a rate adjustment, and a plan of amortization of investment brought about by a more or less temporary emergency."

He gave a chronological review of events which led up to the "artificiality of the present situation." Next he asked "what we are going to do about it." The speaker added:

"To me it seems that privately owned public utilities are in a critical position, critical as to future as well as present policies, one that demands careful consideration, and whether we as regulatory agencies like it or not, will be dumped into our laps for solution or at least for approval or rejection.

"I, for one, would like to be sure of the facts underlying the situation and have a wisely developed policy arrived at before I am forced to pass upon these questions.

"For instance, are we ready to admit that

complete socialization of privately owned public utilities is the answer? The present utility situation could very easily take that course. It may be the right one, but I would like to know."

In short, the speaker conceded his inability to give definite answers to the two leading questions of the discussion and felt that more progress could be made if the National Association of Railroad and Utilities Commissioners should appoint a committee to investigate utility emergency conditions in all states, with the express purpose of giving state regulatory bodies an over-all picture. He suggested three comprehensive subjects for a study by such a committee:

"1. What part of the increased investment can be charged to direct war effort, and how best can this investment be amortized during the indefinite length of the emergency, or retired with equity on its termination?

"2. How much of a necessary investment for indirect war service can be charged to the war effort, and how best, during that effort, can it be amortized or equitably retired?

"3. How much of both classes of investment, as above noted, can be effectively used in the public service after the emergency has ended, and how can the excess investment above this permanent investment best be retired with equity to both the user and the utility?"

On Regulation of Utility Industry during the Emergency

COMMISSIONER Basil Manly of the Federal Power Commission in St. Paul on August 26th declared that, despite the many regulatory problems arising directly or indirectly from the defense program, "there should be no suspension of effective regulation of utilities during the emergency." Commissioner Manly said:

"The rapid changes in economic and financial conditions resulting from the emergency will unquestionably call for greater vigilance and more effective regulation than during what we are pleased to call 'normal periods' but, by the same token, regulatory bodies will be successful in meeting emergency conditions only by speeding up the processes by which they determine the adjustments that should be made in the public interest. The leisurely procedure of reproduction cost evaluation will be even less effective during the emergency than it has been in the past. There will be greater need for accurate, up-to-date information upon which sound and prompt decisions can be made."

Discussing problems relating to the amortization of emergency facilities, Commissioner Manly said it was clear that investments in facilities which have a useful life limited to the emergency period should be amortized during that period. He pointed out, however, that the service life of most of the new generating plants, substations, and transmission lines needed in the defense program will extend for many years beyond the emergency period and therefore the public interest would not justify any attempt to amortize during the emergency the investment in such facilities. Terming the problem "essentially one of depreciation," Commissioner Manly pointed out that the setting aside of larger amounts for depreciation during the emergency period when power facilities are loaded to capacity would have a very desirable effect upon the financial conditions of the utilities, particularly those utilities which now have inadequate depreciation reserves because of inadequate depreciation charges prior to effective regulation. "It is difficult to imagine," Commissioner Manly added, "a better use of increased profits resulting from capacity operations than to increase inadequate depreciation reserves. It may well be an anchor to windward against whatever financial and industrial storms may hereafter arise."

TURNING to the problem of revenue increases resulting from the national defense program, Commissioner Manly said that rate reductions obviously would not be justified where a utility may be receiving large revenues during a brief period with the expectation of suffering a serious decline when the emergency demand is ended. Just as obviously, he added, basic rates should not be increased to take care of a merely temporary increase in expenses.

"We are now entering a period," Commissioner Manly continued, "in which no individual or corporation can reasonably or properly expect to maintain unabated the economic status to which it has become accustomed.

"Everybody will sooner or later have to make sacrifices for the common good. Adjustments from time to time will necessarily have to be made to meet changing conditions and to assure a continuation of maximum service. But this does not mean, in my opinion, that the nation should underwrite perpetual prosperity for any industry or economic group. We are all in the same boat and should sink or swim together."

The attitude of the Federal Power Commission toward these amortization and revenue problems, Commissioner Manly said, may be shown by two principles established by the commission in connection with the diversion of additional water at Niagara Falls to meet defense power needs in the Buffalo-Niagara Falls area. In negotiations with the Niagara Falls Power Company for amendment of license to cover the increased diversion, the

commission stipulated that (1) there should be no excess profits in meeting the requirements of national defense and (2) that the investment in facilities useful only during the emergency should be amortized during that period.

"The excutives of American utilities do not, in my opinion," Commissioner Manly concluded, "desire or expect to earn excess profits from their activities in meeting the enormous demands for power arising out of the requirements for national defense. With rare exceptions, they have coöperated wholeheartedly with the government in meeting those demands. And, in those cases where efforts may be made to convert the nation's power requirements into additional dollars of excess profits, the regulatory processes of the state and Federal commissions should be, and will be, exerted effectively to restrain them."

On Banking Opportunities under Regulation

ADVANTAGES of the traditional banker of a corporation have not been ended by the competitive bidding rule of the Securities and Exchange Commission, according to Robert E. Healy, member of the commission. After the first three deals under Rule U-50, which was enforced on May 7th last, the commission, he said, sent representatives to interview more than twenty New York underwriters.

"With respect to the formation of syndicates to bid on securities issued pursuant to Rule U-50," Mr. Healy declared, "an officer of one of the large underwriters testified that:

"'... On business where we in the past have headed a group on a negotiated basis, we are going to form a group to bid, and we are going to start to form that group by approaching those who were associated with us on the negotiated basis.'

"It is to be expected that this policy will generally be followed in the industry. It appears further to be the inclination of the major members of such traditional groups to accept the invitations so proffered, provided they receive satisfactory participations. Other bankers expressed the view that, other things being equal, they would prefer to accept 'the invitation of that group which was led by the bankers who had been the historical bankers ... for the reason that ... they would know more about the situation.'

"At the present time, therefore, the traditional banker has some advantage over others in organizing a group to bid competitively. This is so not only because of the tendency of the larger participants to adhere to the historical group, and the inclination of others to join in the group headed by the 'informed' banker, but also because the traditional banker is likely to know of the intended issue somewhat sooner than others and can therefore start forming his group before others can decide what course to take. It is not unlikely, however, that as time passes these advantages will tend to disappear as the ties between issuers and their traditional bankers are broken by the force of competitive bidding.

"The syndicates that were organized to bid on the first three issues offered under Rule U-50 were quite large. The three syndicates that bid on the securities of New York State Electric & Gas Corporation consisted of forty-four, fifty, and eighty-one members, respectively. Similarly, the two syndicates which bid on the Philadelphia Company securities had thirty-one and ninety-one members, respectively. Despite this experience several bankers expressed the view that as time goes on the groups will tend to be smaller in size on account of the tendency of bankers to demand larger participations in competitive syndicates than they were accustomed to receive in negotiated underwritings in order to make up for those issues lost.

"It is the view of others, however, that, while there may be a tendency to the formation of smaller groups, there is a reasonable probability that the pressures will be such that the bidders for each issue will include at least one large group composed of bankers who were excluded from the other syndicates."

On Telephone Regulation

CHAIRMAN James Lawrence Fly of the Federal Communications Commission emphasized the need for a realistic approach by regulatory authorities to telephone regulation. If the telephone industry had grown up to suit the convenience of the commissions instead of the telephone-using public there would be no need to coöperate. Every telephone call would stop short at a state border and an interstate telephone system would be neatly segregated for FCC regulation. But such is not the fact. Commissioner Fly added:

"Such a cluster of isolated telephone systems along state and Federal lines would be very convenient indeed for us commissioners, but it would be tough on people who wanted to use the telephone. Indeed, it is nonsensical even to conjure up an image of so illogical a structure. But the point I want to make is this: *It is equally illogical to build our basic system*

of telephone regulation upon this abstract and unrealistic pattern.

"The laws of physics, the plant and equipment of the companies which render telephone service, and the corporate structure of the industry were not designed with the interstate-intrastate distinction in mind. When you pick up the telephone, you are picking up an instrument which is by its very nature both interstate and intrastate. When you signal the operator, you are opening part of a circuit which may end up across the river in Minneapolis, across the state line in Wisconsin, or across the ocean in London or Tokio. And when you pay your telephone bill at the end of the month—as I trust many of you do—you are paying with one check to one company for both interstate and intrastate services. The cold, hard fact which everyone of us is in duty bound to recognize is that our telephone system is both interstate and intrastate—and the vision of each regulatory body must be as broad as the problem which confronts it."

Chairman Fly reviewed the negotiations of the FCC with the Bell system which led to periodic reductions in long-distance rates. He noted that the discontinuance of the FCC's Long Lines Case last June did not mark an end, or even a pause, in the commission's activity with respect to telephone regulation. Instead the commission is building up an expert staff of accountants, engineers, and lawyers of the type recommended in the FCC's report in the investigation of the telephone industry. This staff will be available for consultations with state bodies, subject only to the limitation of time and budget.

REFERRING to the studies which the FCC-NARUC coöperating committee has resolved to take up, Commissioner Fly continued:

"The scope of the work assigned to the coöperative committee is broad indeed. As you know, seven topics have been agreed upon:

1. The problem of separations
2. Depreciation practices
3. Pension costs
4. Western Electric costs
5. Free services
6. Fundamentals of rate structure, and
7. Rate of return.

Going over that list when it was first suggested, I asked myself this question: Suppose by some miracle we could in fact develop a comprehensive agreed-upon policy with respect to each of these seven issues, along with an agreed-upon technique for applying that policy simply and effectively to particular cases. The vista which that possibility opens up is breath-taking indeed. I do not think it would be too much to say that if those seven coöperative points were really reduced to easily applicable formulae, telephone regulation in the United States will have entered a new and golden era.

"No doubt it is too much to expect of any coöperating committee that its labors should lead us into so radiant a Promised Land. Realistically, I know that pension costs and Western Electric costs, depreciation and separation and rate of return will be argued over—yes, and litigated over—long after the reports of our coöperating committee have been received and acted upon. Yet the promise of progress in the right direction is there, and it is up to everyone of us to make the new coöperative program as successful as in the nature of things it can be made."

He concluded that the members of the FCC, including those particularly active in telephone regulation (Commissioners Walker and Wakefield) recognized the need for coöperative action with the state commissions and welcome the opportunity to put that recognition into practical effect.

On Progress Made in Integration

ROBERT H. O'Brien, new director of the public utilities division of the SEC, spoke on the progress made in the simplification of holding company systems. In the course of his address he said that proceedings involving the North American Company, a billion-dollar system, have been completed so far as hearings are concerned and that the commission is considering what order to enter.

After discussing at length some of the various standards set up by §11, the so-called "death sentence" section of the Holding Company Act, Mr. O'Brien turned to the voting power standards.

"Our present experience," he said, "indicates that wherever the common stock equity is so thin as to make it inequitable for the common stockholders to continue to exercise voting control, the appropriate remedy under the act is likely to be a substantial scaling down of the senior securities with a view to creating a corporate structure wherein the common stock equity is so substantial as to justify exercise of voting control by the holders of that common stock.

"The theoretically possible alternative of shifting voting control to the senior security holders, but leaving the existing capitalization unchanged, involves all sorts of practical difficulties. Among others, there is the problem of reconciling the conflicting interests in managerial policies on the part of holders of junior and senior securities. This familiar problem of corporate finance has created

difficulties even with the conventional arrangement which leaves the powers and responsibilities of management to the junior security holders.

"This conventional distribution of voting power assumes that the self-interest of the common stockholders will, by and large, prompt managerial policies designed to promote the welfare of the senior security holders as well. We all know that this assumption has its limitations even where the common stock represents a substantial equity and that it completely broke down with the development of the holding company and of the pyramiding process which made possible the control of the operating companies 'through disproportionately small investment.'

"NEVERTHELESS, we do not believe that the most appropriate way to correct this evil is to transfer voting control to the holders of limited return securities. There is not only the difficulty of protecting any genuine equity in the picture which may belong to the common stockholders, but the fact that such a reversal of the traditional distribution of voting power would present an undue complexity and tend to interfere with the raising of new capital. The action taken for the purpose of fairly and equitably distributing the voting power must be consistent with the standards laid down in the other provisions of the act. For this reason, the action which we are likely to require for the limited purposes of equitably distributing voting power is likely to have as a necessary by-product the correction of undue complexities which are presently a clog to the raising of additional capital by the operating companies in holding company systems.

"Application of the corporate simplification standard of §11 (b) (2) leads essentially to the same result, for corporate simplification involves something more than protecting investors from the bewildering complexities which make it so difficult to appraise the investment position of their securities. It also relates to removing impediments to the raising of new capital.

"Thus in considering whether it is necessary for a holding company to take action to simplify its corporate structure, one important test of undue complexity is inability of the holding company under its present capital structure to raise new capital to finance the needs of the system; and since holding companies are permitted under the statute to sell only common stock for new money, that means simplification to the point where the holding company can finance through the sale of common stock.

"In stressing the relationship between the administration of §11 (b) (2) and the removal of impediments to the raising of new capital by the operating companies, we have in mind the tremendous growth of power demand incident to the defense program and the consequent need for rapid expansion of plant facilities by the electric utilities."

On Regulation of Service Companies

JOHN Houser, assistant director of the public utilities division of the SEC, told the commissioners on August 28th that the annual charges to operating utilities for services performed by affiliated concerns are now approximately $20,000,000 a year, as compared with as much as $60,000,000 a year in past years. This saving, he said, has largely resulted from the regulation of service organizations by the Securities and Exchange Commission under §§13 and 15 of the Holding Company Act. He outlined the basic standards of this regulation as follows: (1) There is a prohibition against holding companies performing services to operating subsidiaries for a charge, except in very limited situations. This prohibition was designed to force servicing into channels "susceptible of regulation." (2) The act requires that services rendered to associate operating companies by mutual or subsidiary service companies must be economical, efficient, and performed "at cost" fairly and equitably allocated among the serviced companies. (3) To carry out the foregoing provision the SEC has prescribed a uniform system of accounts for annual reports of service companies which for the first time opened up the books of these organizations for understandable inspection. Mr. Houser went on to state:

"The major advances in servicing, I believe, have come only as a result of constant day-by-day work directed to insure that these basic standards are complied with by the industry. It is a process requiring careful analysis of each situation, of investigation, of effecting needed changes by voluntary adjustments or under order of the commission following hearings."

As a specific example, the speaker referred to developments in the servicing arrangement between the New England Public Service Company (a Massachusetts corporation, subsidiary of New England Power Association) and Bellows Falls Hydro-Electric Corporation, and Green Mountain Power Corporation, associate companies in Vermont. In this case a former annual charge to operating companies of more that 5 per cent in gross revenues had been modified by commission action so that it is expected savings to one of the Vermont companies (Green Mountain Power Corporation) of approximately 50 per cent would accrue.

Mr. Houser said that the principal function of service companies is not clear cut. They do a number of things in addition to performing services directly connected with operation. They might function as a control medium for holding company supervision. He added that supervising holding companies should pay their own way and not require subsidy from their subsidiaries. He mentioned the sharing of salaries as the principal expense factor involved. He cited the commission's recent decision in Re Ebasco Services Inc., 7 SEC 1056, as a reflection of the SEC's attitude. In that case the commission prohibited the using of salary charges and required the holding company to absorb all the salaries of officers and employees who continued to serve in dual capacities.

Other cases cited involved the United Light & Power Service Company, the Columbia Engineering Corporation, the Middle West Service Company, and Atlantic Utility Service Corporation. These were discussed as being an elaboration of principles laid down in the Ebasco Case.

THE SEC also has jurisdiction over service contracts performed for a charge by an affiliate for persons principally engaged in servicing units of holding company systems. So far, however, the commission has only required such nonsystem companies to file reports disclosing the character of the service relationship. In this respect he mentioned the recent registration of the Edison Electric Institute. He said:

"We believe it will prove beneficial both to the industry as well as to regulatory authorities for these servicing organizations to operate in the light of day with their activities and expenditures and matters of public record. The history of the National Electric Light Association suggests that an observance of this practice would prevent many headaches both for regulatory commissions and the public utility industry."

Among other problems of regulating service companies mentioned by the speaker was the control of such devices as joint checking accounts, joint payrolls, and direct charges by individuals to operating company groups. He predicted that the ever-changing complexion of the industry as a result of the integration program would lead to development of new service company regulation features. Gratifying as the results have been to date, the speaker said much remains to be done: "We have won battles but not the war."

Reports of Committees

On Transportation Regulation

"DURING the past year the pressing problem of national defense has created many new situations in the regulation of the transportation facilities of the nation. Your committee is of the opinion that the national defense can best be served by sensible adherence to the present regulatory requirements as to transportation by both Federal and state commissions. Relaxation of regulation of transportation will result in confusion and will not be conducive to fast and economical transportation. Technical regulatory requirements can be waived where they result in a hindrance to transportation, but relaxation or abandonment of all regulatory requirements will result in such confusion that the transportation system will bog down and national preparedness will suffer.

"Some states have made progress in the past year in furthering the establishment of rates of motor transportation companies, but for the most part the tariffs have been permitted to conform with rail rates without regard to the soundness of such conformance and without taking into consideration economic principles. In other words, with certain exceptions there have not been many studies made which actually have shown the proper costs for the transportation of property by motor carrier, and until such studies are made and rates are put into effect accordingly, it is our feeling that sound regulation of motor carriers is impossible. It is the duty and obligation of state regulatory commissions to establish a proper rate structure for motor carriers in order that the public will be protected, in order that proper relationship will exist between rail and motor carriers, and in order that the motor carriers themselves will receive adequate compensation for the safe conduct of their business."

—REPORT *of Committee on Progress in the Regulation of Transportation Agencies, George McConnaughey of Ohio, chairman.*

On Rate Regulation

"FUNDAMENTALLY, the so-called 'Federal theory' or fair value rule is unworkable; it is crude and cumbersome and definitely unfair from the public's point of view. In

the last analysis, public utility management occupies a position of public trust; the utility company is merely an agent privileged to perform a public function. It is pertinent, therefore, to look about us and take stock of where we stand.

"In the delirious decade of the 1920's, the policy was to engage in the public utility business to make money by promotion, by selling securities manufactured by write-ups and holding company pyramids, and by buying and selling 'properties,' rather than to engage in actual operation of properties in order to make a fair and reasonable return on invested money. We hope—and believe—that this era is past. The breaking up of holding company pyramids, expanded Federal jurisdiction, more enlightened state regulation, 'yardstick' competition, and public ownership should and are focusing more attention upon the fundamental issue—namely, the operation of public utilities as a business and end in itself and a source of legitimate but reasonable returns on investments. We believe that most operating men, as distinguished from the 'magnates,' financiers, and promoters, seek no more than to be allowed to operate soundly and make a reasonable return thereby.

"Much water has gone over the dam—and much remains in the capitalizations—but it is imperative to keep the fundamentals in mind. Reproduction cost, per cent condition, going value, and other fantastic or hypothetical hobgoblins can be eliminated and a basis of a reasonable return on investment—as measured by prudent or original cost—can be accomplished if both the regulator and the regulated will make a sincere, joint effort toward that end. Such a basis will not, of course, support existing capital structures in many cases."

—REPORT *of Committee on Rates of Public Utilities, Charles E. Byrne of Illinois, chairman.*

On Telephone Regulation

"IF the door is to remain open for future coöperative efforts, it is imperative that the states' participation be whole-hearted and effective. It is believed that the nation-wide studies now being undertaken [by the FCC] will be of great aid to state commissions in exercising their regulatory duties over intrastate telephone business. The long, expensive investigations made by the Illinois Commerce Commission, the Wisconsin Public Service Commission, and the Minnesota Railroad and Warehouse Commission in the recent cases involving telephone rates of the Bell system in their respective states will no longer be necessary if these nation-wide studies produce results generally acceptable to the states. This is particularly true concerning the separation studies and the always-present problem of whether separation should be based upon board-to-board or station-to-station basis. The license contracts, Western Electric prices, depreciation practices, all fall within the same categories. It is believed that these studies if carried forward as now contemplated will be acceptable to a majority, perhaps all, of the states. It is urged that the states coöperate so far as possible in accepting the results. Their value will be measured primarily by the extent they are accepted. We intend to keep the association fully advised of the progress of these studies."

—REPORT *of Committee Coöperating with the Federal Communications Commission in Special Studies of Telephone Regulatory Problems, Robert A. Nixon of Wisconsin, chairman.*

On Continuing Property Records

"THE continuous records, principally because of practically no delay and small cost, are being found practical not only in rate cases but in divisions cases; joint rail and barge rates and division adjustments; reorganization of railroads coming out of bankruptcy or receiverships; opening of the books of reorganized companies; studies of maintenance and depreciation; adjusting gathering charges and trunk line transportation rates by pipe lines; and for various national defense and planning projects.

"One of the interesting and most valuable developments is that the system has given the commission a factor that was impossible of ascertainment at the time of the original or basic valuations. That is original cost. Few railroads twenty years ago had records of original cost. The commission finally accepted, as the best basis of estimate of original cost, the cost of reproduction new as of so-called 1914 normal prices. Twenty years of annually (1) charging out property at its original cost, where and if known, or if not known, at the 1914 normal prices, and (2) taking in the new property at cost, have given the commission the record of original cost for approximately 75 per cent of the property. The 1914 reproduction cost still stands for the remaining, and that is being reduced year by year. The com-

mission now states 'original cost' as a fact in exhibits showing the elements of value. The state commissions in their work or experiments with continuous records may find in this device a suggestion that may be applicable in formulating their plans for continuous records."

—REPORT *of Committee on Valuation, Ernest I. Lewis of ICC, chairman.*

"WHILE a few states are making progress in establishing, or experimenting with, continuous records and inventories, it cannot be said that the movement is general, and, where attempted, seems largely to be limited to the larger classes of utilities such as gas, electric, and telephone. There is still the question of whether it is too expensive. The engineers of the state regulatory commissions at their annual meeting in May displayed a considerable variety of opinion. Probably a majority who spoke were of opinion that, applied at least to the larger utilities, the cost was less than complete revaluation at periods which was indicated averaged about seven years apart. They seemed agreed that systems of continuous inventories and records were as efficient or inefficient as 'the will to make such methods successful.' There seemed to be a wide variance in such matters as the bearing of the expense—generally it was charged up to the utilities; and a variance in organization for, and methods of, doing the job. One of the striking differences between continuous inventories and records in the states, and the continuous records and inventory procedure of the Interstate Commerce Commission, is that the utilities keep the record under supervision, whereas the Interstate Commerce Commission plan results in the commission keeping the record."

—REPORT *of Committee on Valuation, Ernest I. Lewis of ICC, chairman.*

On Sliding-scale Regulation

"THE merit of a sliding-scale plan as a method of reducing the time and expense of rate cases lies in the fact that it substantially does away with such cases in the ordinary sense by reducing the rate-fixing problem to a definite annual procedure in which the major issues have been resolved by prior agreement in lieu of the usual, intermittent proceedings in which the major issues have to be resettled each time. However, the efficacy of the sliding scale as a means of obtaining fair and reasonable rates is another question. Rates have, of course, fallen appreciably in the District of Columbia since the 'Washington Plan' was initiated in 1925, but how much of the decline is attributable to the plan we do not know. Conditions in the District are hardly typical. Furthermore, electric rates have decreased materially in other localities since 1925, but we have been unable to do the research necessary for a comparison with other areas. . . .

"Obviously, if the sliding-scale plan were generally adopted, some checks or tests of efficiency would be necessary. In fact, such yardsticks would be useful even though the sliding scale were not the method of rate fixing. We have in mind such measures as investment per kilowatt of generating capacity, or per station, etc.; various classes of operating expenses per customer or per unit of sales; and numerous other measures of like character. A program of collecting and compiling such information from utilities throughout the nation might well be considered by the association even though we are well aware of the qualifications to be considered in making comparative observation of operating performance among companies and from year to year in the same company."

—REPORT *of Committee on Rates of Public Utilities, Charles E. Byrne of Illinois, chairman.*

On State-Federal Coöperation

"WE are informed that the Federal Communications Commission has made available certain funds (appropriated for traveling expenses) for the payment of expenses of state commission personnel engaged in these coöperative studies. These funds are limited, however, and it is hoped that a specific appropriation for such expenses may be obtained from Congress. We are assured of the coöperation of the Federal Communications Commission in making available as much of the existing funds as possible for expenses of state personnel. It is recommended that the association adopt a resolution urging Congress to appropriate sufficient funds so that the Federal Communications Commission may pay the expenses of state staff members working on this case." [Such a resolution was adopted by the association.—Ed.]

—REPORT *of Committee Coöperating with the Federal Communications Commission in Special Studies of Telephone Regulatory Problems, Robert A. Nixon of Wisconsin, chairman.*

The March of Events

Transit Gets Priority Ratings

THE street railways, busses, trucks, and other forms of common carrier facilities, whether urban, suburban, or interurban, including terminals, were granted a preference rating of A-10 for delivery of required repair parts by a special order of the OPM priorities division, released September 9th. The order also applied to a number of other essential public services, including communications companies (see page 414), but not gas and electric utilities, which had been included in an earlier order on "repair and maintenance," subsequently withdrawn.

Procedure under the new plan is automatic, requiring neither applications to nor certificates from the OPM. The rating may be invoked by a simple endorsement on qualified orders by the operating company or suppliers for the operating companies. "Repairs," as defined under the rating, would include items needed to avoid "actual or imminent breakdown," plus a "minimum inventory of material" to prevent the same.

Another Stettinius order early this month gave a preference rating of A-3 to manufacturers of motor busses and certain types of trucks. Producers of public passenger carriers may use the rating to produce all defense orders and to produce civilian carriers at the going rate during the first half of the automobile model year which began August 1st.

Rail Strike Issue

A 5-MAN fact-finding board headed by Dean Wayne Lyman Morse of the University of Oregon Law School was appointed September 11th by President Roosevelt to investigate issues in the threatened strike of 1,250,000 railroad employees. Other members of the board are: Thomas Reed Powell, Harvard law professor; James Cummings Bonbright, professor of finance at Columbia University; Joseph Henry Willits, director of social sciences for the Rockefeller Foundation; Huston Thompson, Washington attorney.

The President's proclamation automatically postponed for sixty days any possibility of a legal walk-out or lock-out which would paralyze the nation's transportation system.

The nonoperating unions with 900,000 members had set September 11th as the date for a walkout and the operating brotherhoods, engineers, etc., planned to set a date later.

Error on Rate Review

IN reviewing the report of the Committee on Progress in Public Utility Regulation, presented at the recent meeting of the National Association of Railroad and Utilities Commissioners in St. Paul, PUBLIC UTILITIES FORTNIGHTLY, issue of September 11th, attributed a section on comparative telephone rates to W. Trigg Miller, economic analyst of the Tennessee commission. This was not accurate since that particular section was the product of Chairman Leon Jourolmon, a member of the Tennessee commission, and other members of his committee.

The inaccuracy resulted from the fact that the telephone rate section, whose authorship was not otherwise identified, followed another section analyzing electric rate comparisons which had been prepared by Mr. Miller, who was not a member of the committee.

There were several reservations by committee members respecting the report as a whole. Chairman Fly of the FCC, former Commissioner Keech of the District of Columbia, and Mr. McNaughton of the California commission neither approved nor disapproved, because they had no opportunity to study the same. Commissioner Buchanan of Pennsylvania, Chairman Olds of the FPC, and Commissioner Peterson of Wisconsin registered disapproval of certain sections of the report—the latter dissenting from the telephone rate comparison section.

City Union Bargaining Illegal

COLLECTIVE bargaining agreements between a city government and a union of its employees "would be an unlawful and unauthorized delegation of public power to the union, a private organization, over which there is no public control," according to a report published on September 3rd by the National Institute of Municipal Law Officers, with headquarters in Washington, D. C.

This conclusion was one of several based on a survey by Charles S. Rhyne, executive director of the institute, in which he studied opinions of state attorneys general, court decisions, and individual reports furnished by 385 city attorneys. The institute said the recent strike in Detroit and the threatened strike in New York city's transit system "have focused national attention on public employee unions." Among its conclusions were these:

No city has ever signed a collective bargaining agreement with a labor union representing city employees similar to the agreements entered into between private industry and labor unions.

Legal opinions of the courts, city attorneys, and state attorneys general are unanimous in their decisions that cities do not have the power to sign collective bargaining agreements with labor unions representing municipal employees.

By taking away municipal control over its employees, such agreements would, in effect, vest control of the municipal government in an unelected and uncontrolled private organization (the union) and take control from the head or heads of the municipal government who have been chosen by the public and whose conduct is regulated by law.

The declared public policy of the Federal, state, and municipal governments, as was so well expressed by the President of the United States, is opposed to collective bargaining agreements in public employment.

Federal legislation providing for collective bargaining for private industry employees expressly provides that the legislation does not apply to cities and their employees.

City employees have no right to strike to enforce collective bargaining agreements with the city.

SPAB Leaves Power Control Unsettled

CERTAIN salient points should be noted in connection with the latest reorganization of the defense set-up. First, the President's order does not necessarily mean that there is to be no power coördinator. The new Supply Priorities and Allocation Board (SPAB) apparently can control plans for the production and transmission of power and fuel. This is made possible through the priorities system. But the old OPM priorities division exercised similar authority.

Nothing in the reorganization order precludes the appointment of a power coördinator. It will be noted that the office of Petroleum Coördinator (Secretary Ickes) was not abolished.

It is, therefore, still possible that a power "czar" will be regarded as equally essential.

SPAB itself is another new broom in the defense program. Perhaps it is the final answer to the double problem of production and supply. Perhaps it is just another agency. Whether four New Dealers and three industrialists can function without friction remains to be seen.

The reorganization shifts the division of civilian supply (headed by Joseph L. Weiner) from OPACS to OPM, and OPACS is abbreviated to OPA—Office of Price Administration. Friction between OPM and OPACS is supposed to have been one of the main reasons for the reorganization. Yet Leon Henderson, in addition to continuing as Price Administrator, has been named as director of civilian allocations in OPM.

Greyhound Dispute Settled

SETTLEMENT of all outstanding issues in contract negotiations was reached recently by representatives of Pacific Greyhound Lines and their AFL drivers, eliminating the threat of a 7-state bus strike.

Joint announcement of the agreement was made by Gregory Harrison, attorney for the company, and Henry P. Melnikow, of the Pacific Coast Labor Bureau, who represented the AFL Amalgamated Association of Street, Electric Railway, and Motor Coach Employees.

Melnikow said the agreement would go to a vote of the membership early this month. He estimated it would take approximately ten days to complete the vote. Acceptance of the contract was forecast on the basis of its unanimous approval by the union committee which sat in on the negotiations.

The agreement included the closed shop, the check-off, and an average wage increase in all classifications of approximately 18 per cent, according to Melnikow. Minimum rates for drivers were raised from 3 1/10 cents per mile to 3¼ cents, and maximum rates from 3¼ to 3 6/10. Hourly rates for the drivers on short runs between San Francisco and Marin, California, were raised from 67½ to 85 cents.

The union committee estimated the new contract, when finally ratified, would cover 1,400 bus drivers and terminal workers in the 7-state area.

Arkansas

Wage Increase Announced

A 5 PER cent wage increase for employees of the Arkansas Louisiana Gas Company, Arkansas Fuel Oil Company, and Arkansas Pipeline Corporation was announced in Shreveport, Louisiana, recently by D. W. Harris, vice president and general manager of the Arkansas Natural Gas Corporation. About 3,000 workers in twelve southern states were to receive the increase, effective September 1st.

R. W. Curran, Little Rock manager of the Arkansas Louisiana Gas Company, stated that between 250 and 300 Arkansas employees of the Arkansas Louisiana Gas Company and the Arkansas Fuel Oil Corporation would share in the wage increase. He was unable to estimate the total increase in wages which would result.

Connecticut

Water Hearing Scheduled

A HEARING on the question of whether the water rate increase granted in 1939 to the New Haven Water Company was legal was scheduled to open in New Haven on September 18th, the state public utilities commission announced recently.

The utilities commission sent to all interested parties notices setting the place of the hearing as the Hall of Records in that city.

The New Haven water rate case was reopened by the revamped utilities commission a short time ago on orders of Governor Hurley, who directed it to investigate the existing rate schedule. A preliminary hearing was held at Hartford on August 5th.

At the September 18th session, Mayor John W. Murphy and Corporation Counsel Vincent P. Dooley of New Haven were expected to challenge the legality of the previous commission's action in granting the rate boost, on the ground that the procedure followed did not comply with state statutes. They claim that the increase was authorized following a "closed" hearing at which neither the city, the ten other towns affected, nor the public in general was represented.

District of Columbia

Pay Raised in Emergency

SOARING costs of living within the nation's capital were recognized publicly for the first time on September 7th as the Washington Gas Light Company announced establishment of "defense emergency compensation" to be paid 1,900 employees periodically for the duration of the emergency.

Amount of the compensation, which became effective at once and retroactive to July 1st, would be based on figures of the Labor Department's Bureau of Labor Statistics, showing how much living costs exceed an index of 100 per cent based on average costs compiled during the 5-year period ending in 1940.

The compensation will be paid each month at rates based upon rises or drops shown in Washington, and will be revised every three months when the Labor bureau's quarterly, "Changes in the Cost of Living," is issued.

The index figure for June 15th (published in July) would determine the rate of emergency defense compensation paid for July, August and September, while the index figure for September 15th will govern the amount for October, November, and December. Similarly, each succeeding quarterly index figure will be the determining factor for subsequent quarters, it was announced.

The first payment to the gas company's employees would be included on pay checks issued September 12th and would comprise compensation for both July and August. Since the June 15th index figure was 103.2, the first payments will be at the rate of 3 per cent increase in pay for both July and August, and the second payment, in October, will also be at 3 per cent, applied to salaries and wages earned in September. Payments for the following three months will be at whatever rate is indicated by the index figure for September 15th, which will be published by the Labor Department in October.

All employees of the company will receive the compensation except those whose basic rate of pay is $300 or more per month and compensated in whole or in part by commissions.

Truck Strike

SEVERAL hundred truck drivers and helpers who handle railroad freight went on strike early this month for higher wages, resulting in jamming of merchandise and materials on station platforms.

The strikers, members of the Drivers, Chauffeurs, and Helpers Local Union No. 639, American Federation of Labor's teamsters union, asked that drivers' pay be increased from $31 to $35 weekly and helpers from $25.50 to $30.

Officials of one delivery company estimated about 1,200 truckers and 600 trucks were directly or indirectly involved in the strike. Railroads placed a temporary embargo on shipments to Washington to prevent further congestion of yards with loaded cars.

Indiana

Utility Firm Formed

PUBLIC Service Company of Indiana, Inc., a new corporation with a capitalization of $108,035,721, was formed on September 6th when formal articles of consolidation were filed with the secretary of state of Indiana.

The new company is successor to the

Public Service Company of Indiana, its subsidiary, Dresser Power Corporation, Central Indiana Power Company and its subsidiary, Northern Indiana Power Company, and Terre Haute Electric Company, Inc. All of the consolidating companies were subsidiaries of the Midland United Company of Chicago, a holding company formerly controlled by Samuel Insull.

President of the new company is Robert A. Gallagher, of Indianapolis, former president of the Public Service Company of Indiana. L. B. Schiesz, Indianapolis, former president of the Central Indiana and Northern Indiana companies, is first vice president.

Asks Gas Rate Hike

THE Eastern Indiana Gas Company, serving 16 towns and cities in Rush, Henry, Wayne, Madison, Hamilton, and Howard counties, recently petitioned the state public service commission for permission to increase rates.

The company said it was failing to earn a fair return on its valuation of $1,250,000. It gave its 1940 revenues as $73,594 and its operating expenses for the year as $76,092. Expenses and operating revenue this year are in about the same proportion as last year, according to the petition.

The company also asserted that to provide adequate service it will be necessary to drill ten new wells or buy gas from the Texas field. It asked the commission to allow rates which would give not less than 6 per cent return on valuation.

Cities and towns served by the company are Rushville, Cambridge City, Milton, Pershing, Dublin, Straughn, McCordsville, Dunreith, Mays, Raleigh, Spiceland, Lewisville, Fortville, Mt. Auburn, Sexton, and Scircleville.

Iowa

Purchase Suggestion Killed

THE Des Moines city council, dividing 3 to 2, on September 4th killed a suggestion that the city send a delegate to a Securities and Exchange Commission hearing in Washington, D. C., to get information in connection with possible municipal purchase and operation of the electric and gas utilities in Des Moines.

The action followed presentation of a resolution, drawn upon order of Mayor Mark L. Conkling, which would have had the city legal department intervene for the city in an October 10th hearing on the corporate structure of the Illinois Iowa Power Company. This firm owns the Des Moines Electric Light Company, which in turn owns the gas facilities in the city.

Finance Commissioner T. Harry Vicker moved adoption of this resolution. The resolution directed the intervention in order to lend aid at the hearing and to procure an order to "insure simplification" of the parent company's corporate structure.

Stating that sentiment on proposed purchase of the utilities by the city has "crystallized," the resolution said the city has a duty to ascertain the facts for the public in a "careful, unbiased, and entirely honest manner."

It added the public is entitled to know whether purchases or condemnation of the facilities is to its financial advantage and should be the sole judge of this, "apart from any individual ambition or interest."

Kentucky

Co-ops Push Tax Exemption Suit

THE question of whether the 26 rural electric coöperative corporations in Kentucky must pay state taxes advanced a step nearer final determination when arguments were delivered before Circuit Judge W. B. Ardery early this month.

E. C. Newlin, Danville, argued that the coöperatives, formed with Federal aid to supply light and power to rural consumers, were exempt as Federal agencies.

Assistant Attorney General M. B. Holifield, declaring he approved the coöperatives' purpose of furnishing cheap light and power to farmers, asserted that the state constitution would have to be changed before they could be exempt from franchise and real estate taxes.

Louisiana

Gas Dispute Arbitrator Named

SELECTION of Judge Rufus E. Foster, senior judge of the fifth Federal Circuit Court of Appeals, as arbitrator to fix "fair and reasonable rates for gas sold to consumers in New Orleans," was approved at a special meeting of the commission council September 5th.

Judge Foster was selected by Mayor Robert S. Maestri and Utilities Commissioner Fred A. Earhart, and was accepted by A. B. Paterson, president of the New Orleans Public Service, Inc., according to a formal written statement made by Mayor Maestri.

Under the agreement, Judge Foster is authorized to select an auditor and an engineer for such service as may be needed. Judge Foster said he had no idea who they would be but they would not be connected with either the city or the utility company.

The existing rate on natural gas in New Orleans is 90 cents per thousand cubic feet, plus a 25-cent meter charge. Commissioner Earhart, in a report to Mayor Maestri and the commission council on August 27th, recommended rates of 50 cents per thousand cubic feet for the first 3,000 cubic feet, 45 cents per thousand cubic feet for the next 12,000 cubic feet, and 40 cents per thousand cubic feet for the next 15,000 and more cubic feet.

Following receipt of Commissioner Earhart's report, which the commissioner said was based on a comparison with rates paid by domestic consumers in other cities, Mayor Maestri suggested the employment of F. N. Billingsley, utilities engineer, to make a survey and report on "the whole gas situation in the city." Mr. Billingsley declined the employment, giving editorial comment in a local paper as a reason for refusal of the assignment.

Maryland

Natural Gas Plan Rejected

A PLAN whereby the Consolidated Gas, Electric Light & Power Company (Baltimore) would mix natural gas with its manufactured product for heating purposes with a view to increasing the market and lowering consumer costs was declared impractical last month by the state public service commission.

A resolution of the 1941 legislature, sponsored by Delegate Charles S. Lord of Baltimore county, asked the PSC to investigate the possibility of "creating a wider market for gas with a subsequent increase in revenue to the local utility and a lower cost to the consumer."

The commission's report said large quantities of low-cost industrial by-product gases now were available to the gas company and predicted an increase in the amount of coke-oven and blast-furnace gas in connection with a program of expansion at Bethlehem Steel's Sparrows Point plant.

The commission said it had been told that a natural gas pipe line running through Maryland was inadequate to serve both Washington and Baltimore. Service to Baltimore, the commission stated, would require an additional pipe line, virtually impossible because of priorities on steel.

Cab Firm Again Attacks Rule

THE Sun Cab Company late last month renewed its efforts to have invalidated the state public service commission regulations abolishing the minimum booking, or "nut," system of compensating taxicab drivers and curtailing cruising.

In a 70-page amended bill of complaint, the taxicab concern asked the Circuit Court No. 2 to enjoin the commission from enforcing the regulations. The amended bill was filed by Isaac Lobe Straus, Isidor Roman, and Douglas H. Gordon, attorneys. Several weeks ago Judges Eli Frank and Rowland K. Adams sustained a demurrer filed by the commission to the original injunction proceedings and upheld the regulations.

They held the commission had the authority to abolish the "nut" system of compensation and that the curtailment of cruising was proper. They also held that the commission's hearing on the taxicab situation in the city was properly conducted.

Massachusetts

Plans Refunding Issue

THE Boston Elevated Railway Company was recently reported contemplating an issue of $5,000,000 of bonds for refunding purposes. The railway has filed a petition with the state department of public utilities seeking approval of an issue of $5,000,000 principal amount of negotiable registered or coupon bonds to be payable in not less than fifteen years and not exceeding twenty-five years from their date. The bonds are to be sold to the Boston Metropolitan District in accordance with the provisions of Chapter 567 of the acts of 1941.

The bonds would bear interest at a rate 2 per cent higher than the rate payable on the bonds of the district which may be issued to provide funds for their purchase, and would be for the same terms as the bonds of the district last maturing. The issue is for the purpose of paying or refunding $5,000,000 principal amount of bonds maturing November 1, 1941, as authorized by a vote of the elevated trustees.

Minnesota

Fare Raise Okayed

THE St. Paul Trades and Labor Assembly recently announced it would not oppose a request of the Twin City Rapid Transit Company for an increase in street car fares. If investigation of the company's request to the state railroad and warehouse commission shows an increase is justified, the assembly favors a raise of about four-fifths of a cent for car tokens.

It was pointed out that the company recently granted wage increases for virtually all employees and operates under a closed shop contract with the Amalgamated Association of Street and Electric Railway Employees, AFL.

Must Pay Gas Tax

THE St Paul utilities committee has notified the Northern States Power Company that it must pay a 5 per cent gross earnings tax on the fuel coming through a proposed new natural gas line, the city council was recently informed by William Parranto, commissioner of public utilities.

Parranto said the utilities committee made up of himself, Mayor McDonough, and Harry Oehler, city corporation counsel, had conferred with G. O. House, St. Paul manager of the power company, and that it had been made clear the tax must be paid. It was pointed out that a 5 per cent tax is paid on the other natural gas line through the city and that no exception to the rule would be made.

Commissioner Parranto said House's contention that imposition of a 5 per cent tax on the new line would be double taxation was wrong. Parranto explained the 5 per cent gross tax now paid is not coming from the company but from users and is reflected in light and gas bills.

Northern States Power, it was said, expects to use the new line to provide fuel for partial operation of its electric power-generating plant. The gas would not be available for use by consumers.

The company filed application with the city council on August 28th for permission to build the pipe line and at that time House said the company "certainly will not" pay the 5 per cent gross earnings tax.

New Jersey

Asks Rule on Rail Tax

ATTORNEY General David T. Wilentz, acting against the urgings of Governor Charles Edison, asked the New Jersey Chancery Court to rule on the validity of the delinquent railroad tax compromise enacted in July by the legislature. Wilentz, questioning constitutionality of the laws, estimated they had canceled interest and penalties totaling $22,548,564 owed by five railroad systems.

The attorney general's challenge was presented in the form of a civil information, an ancient but unusual procedure in which the court is simply asked for its opinion on validity of laws. Setting forth the facts at issue, Wilentz's information urged the court to restrain State Treasurer William H. Albright from carrying out provisions of the tax interest waiver. It requested that the court provide "relief agreeable to equity and good conscience."

Wilentz challenged constitutionality of the cancellation on two grounds. He contended the waiver granted special favor to a particular group of railroad corporations, and that any state grant to a private company was unconstitutional.

New Mexico

Regulation Vital in Emergency

CHAIRMAN Leland Olds of the Federal Power Commission told members of the newly created state public service commission during a conference at Santa Fe on September 9th that "utility regulation has a vital part to play in the present emergency, not simply in protecting but in assuring to millions of our people standards of living that are worth fighting for." He said:

"We are now engaged in a great defense effort, an effort to protect our institutions, but after the emergency we will face an even greater threat to those institutions unless we can find a way to eliminate the social instability which arises in considerable measure from the artificial cost and price barriers resulting from monopoly."

Monopoly was permitted in the utility field, Chairman Olds said, because "people agreed that monopoly was less wasteful." But the people failed to recognize, he added, that the establishment of monopoly meant that the incentive to low costs and low prices had been eliminated.

New York

Taxi Curb to Conserve Fuel

A PLAN to revise the operating methods of New York's 12,000 taxicabs, designed to save 18,000,000 gallons of gasoline annually, was presented last month to Grover A. Whalen, who is preparing a program of gasoline conservation for Mayor LaGuardia.

The plan came from Benjamin Botwinick, director of the Taxicab Bureau of New York, who informed Mr. Whalen that 65 per cent of the mileage of the city's taxicabs was "dead"—that is, brought in no revenue. It results, he explained, from trips back and forth to garages, from return trips to stands after delivering fares, and from cruising.

He said he thought this dead taxicab mileage could be considerably reduced, and other savings made, if all the cabs in the city were put on a one-shift-a-day basis.

Tax Dispute Settled

MAYOR F. H. LaGuardia announced on September 7th that the city of New York and the Consolidated Edison Company had settled with his approval all litigation arising from cumulative increases of $936,725,250 in their real estate valuations over the last six and one-half years by which the company agrees to the payment of $23,039,535 in increased taxes to the city without further dispute.

The total assessments involved, including the increases, aggregate $3,434,600,013, making this the largest tax settlement ever accomplished by the city.

The extent of the victory is most clearly seen, it was said, when it is realized that by the terms of the settlement the company has been brought to consent to an increase of 37.45 per cent in the level of its assessments.

North Carolina

Power Hearing Recessed

THE hearing of the Federal Power Commission charges against the Carolina Power & Light Company was recessed at Raleigh on September 5th until September 29th. The recess came as a result of a request by company attorneys who said that their presence was required elsewhere because of other commitments. FPC has charged that the Carolina Power & Light Company has issued stock on the basis of failure to reclassify its accounts in the required manner which has left an excess of $24,000,000 on the company's books. The commission contends that the stock is inadequately supported.

Ohio

Plans New Power Unit

To keep ahead of mounting electric power demands occasioned by the national defense program, Ohio Edison Company will build another 40,000-kilowatt addition to cost about $3,600,000 at its Toronto power station on the Ohio river, according to A. C. Blinn, president. The new addition, to be completed in the fall of 1943, will be the sixth generating unit to go into the Toronto plant and will increase its power production to 220,000 kilowatts. A new steam turbine and generator for the new unit have already been ordered from Westinghouse Electric & Manufacturing Company, Mr. Blinn said.

Pennsylvania

Fare Boost Postponed

THE Philadelphia Transportation Company filed with the state public utility commission late in August an amendment to its application for a trolley fare increase, postponing the effective date to January 15th. The company's directors voted for the postponement after similar action by its executive committee earlier in the month. Date set originally for the new fares to take effect was October 1st.

A strenuous fight by the city and other agencies against the increase still is in prospect. New fares would be three tokens for a quarter, instead of two for 15 cents, on trolleys and subways. Some bus fares would be reduced to correspond and exchange costs would be cut.

The vote at the directors' meeting was 15 to 1. Dissent came from former City Solicitor Joseph Sharfsin, one of the city's representatives on the board, who voiced the sole dissent at the original meeting authorizing the rise.

Hearings on the proposed new fares are expected to begin in November.

Power Blackout Averted

A LIGHT and power blackout in 10 central Pennsylvania counties was averted recently by an eleventh hour truce between the Pennsylvania Edison Company and the CIO Utility Workers Organizing Committee.

The union, which claims to represent a majority of the company's 760 employees in power relay stations and maintenance departments, agreed to call off a threatened strike after the company subscribed to a proposal to conduct a bargaining election among the employees. E. H. Werner, president of the company, signed an agreement with the union to have the National Labor Relations Board conduct an election before October 1st. Members of the union unanimously approved the agreement. Under terms of the truce, all of the company's wage and salaried workers, excluding power plant employees, supervisors, and foremen, were declared eligible to participate in the election. The company has an AFL contract in its four power plants.

Other terms canceled the company's appeal for direct NLRB intervention in the dispute; provided immediate contract negotiations if the CIO is victorious by ballot, and set up the wage and salary workers as an uncontested bargaining unit for a year. Terms of any future union contract would be retroactive to September 1st, it was agreed.

South Carolina

Car Track Salvage

A PLAN under which the Work Projects Administration would be asked to remove the street car rails from the city of Columbia streets was being studied by Mayor L. B. Owens, it was announced recently. The mayor had been advised that the WPA has set up a program for removal of abandoned publicly owned street car rails to salvage the steel for defense production.

Mayor Owens said that although some of the streets on which street car tracks are located have recently been surfaced by the highway department, he thought the city should offer the material to the government.

Under an agreement made several years ago the South Carolina Electric & Gas Company was to have removed the tracks, but last year the city accepted a cash settlement from the company and the tracks remained in the ground and became publicly owned tracks.

Washington

Signs Bonneville Contract

THE Benton Rural Electric Association, Inc., a publicly owned distributor of electric power in Yakima and Benton counties, executed a 20-year contract last month for the purchase of 600 kilowatts of Columbia river electricity from the Bonneville Power Administration.

The association was the tenth such agency, and the thirty-sixth publicly owned power distribution system, to sign a Bonneville contract. It increased the power administration's sales of electricity to a total of 326,230 kilowatts of contracted demand.

The association agreed to pay for its new power supply at the rate of one-quarter cent per kilowatt hour of monthly use, plus 75 cents for each kilowatt of monthly demand. Under terms of the agreement the association will use its revenues from the sale of power for the payment of current operating expenses, including salaries, wages, cost of materials and supplies, power purchases, taxes, and insurance. From remaining revenues, interest due on system indebtedness, amortization charges, replacements of plant, contingencies and cash working capital will be reserved.

All remaining income from power, over reasonable reserves, shall be considered surplus revenues, and shall be used as a basis for reduction of rates.

Wisconsin

Asks Gas Line Prohibition

THE city of Milwaukee recently asked the state public service commission to deny the applications of three natural gas companies for certificates of convenience and necessity to serve Milwaukee and the state, claiming the city "will be seriously inconvenienced for years to come by the physical incidents of the changeover."

A 14-point brief was filed with the commission, summarizing objections raised during a prolonged hearing on petitions of the Natural Gas Pipeline Company of America, the Independent Natural Gas Company, and the Wisconsin Natural Gas Company.

The Latest Utility Rulings

Approval of Lease of Certificate

THE action of the New York commission in disapproving a lease of four certificates of convenience and necessity from a bus company was reversed by the appellate division of the New York Supreme Court. A finding of the commission disapproving the lease was held to be arbitrary and capricious, without evidence to sustain it. The commission, it was pointed out, had approved leases in four identical cases and then on the same proof denied like relief for no reason whatever.

An assertion that the commission was without jurisdiction to approve the lease because the parties by their act put it into effect without the commission's approval was said to be refuted by the proof presented.

The lease for which approval was sought provided for approval by the commission and distinctly stated that performance thereunder might not be commenced until such approval was secured. The lease itself in so many words stated that it should not be effective until approved by the commission. During a trial period the proposed lessee was to operate the line not as lessee or agent but as an employee of the lessor.

Additionally, the court did not agree with the commission's interpretation of § 22 of the Public Service Law that but a single rehearing is contemplated by the statute, but it was said that this question was not of decisive importance in this case. *Re Fitzgerald et al. 29 NY Supp (2d) 9.*

Rates and Return Allowances of Taxicab Companies

THE Pennsylvania commission in an investigation of two Harrisburg taxicab companies held that a rate reduction should be ordered for one of the companies but not for the other. The majority commissioners considered a return of 10 per cent reasonable in view of the peculiar circumstances under which taxicab operation is conducted.

The commission said in part as follows:

> Any determination of the rate of return properly allowable to a taxicab utility must not only take cognizance of the factors always considered in making allowances for utilities of a more stable nature, such as water, electric, and telephone companies, but must also recognize that taxicab utilities are so different in some respects from such stabilized utilities that additional factors must be given consideration. A water company, for example, enjoys a complete monopoly in its territory and serves a prime necessity resulting in stable earnings from year to year. A taxicab utility renders a semi-luxury service and is in competition with other forms of transportation. It is obvious, therefore, that periods of severe economic changes, which may have little or no effect on a water utility, may and often do, have serious effects on a taxicab utility. In this particular case, respondent is in direct competition with another taxicab utility, private automobiles, and a city-wide bus system. Respondent's prosperity varies widely with local economic conditions.

Commissioner Buchanan dissented from the ruling on return allowance. He said that the argument that a 10 per cent return is proper because the capital required to operate a taxicab company is

small in comparison with other public utilities is entirely fallacious.

Commissioner Beamish dissented in both cases, stating that the decision of the majority was a "damaging blow to proper regulation of taxicab service." He criticized "setting up a double standard of fares and of fitness and adequacy of service in Harrisburg." He criticized the basing of rates on cost of service. Such method, he said, should be applied where there is no competition and where the public is at the mercy of a single utility, but the true method, and one that is applied generally to taxicab operation, he continued, is "value of service."

He said further that it was inconsistent for the commission to permit both companies to earn at least 10 per cent profit while the commission forces other types of utilities to accept 6 per cent as the limit of profit, because they are monopolies having as their yardstick "cost of service," and yet applying the same "cost of service" yardstick to taxicabs competing with each other.

Commissioner Buchanan, in his concurring opinion, said:

> This case has been a football before this commission for more than four years. Part of the delay has been due to a weird theory of rate making entitled "value of service." Fortunately, that theory has been discarded by the majority in favor of the fundamental principle of rate making, "cost of service." The minority need only glance at the railroads to ascertain what chaotic conditions can result from rates based on "value of service."

Pennsylvania Public Utility Commission v. Harrisburg Taxi & Baggage Co. (Complaint Docket No. 11429); Pennsylvania Public Utility Commission v. Penn Harris Taxi Service Co. Inc. (Complaint Docket No. 11430).

Denial of Permit for Noncompliance with Law

A WASHINGTON statute provides that no permit shall be granted if the applicant, or any of its principal officers or stockholders, fails, or has failed, to comply with the laws of the state of Washington. Nevertheless, a permit was not denied in a case where the applicant, without intention to violate state laws, had operated a motor vehicle over the state highways for compensation without first obtaining a permit to do so and where he finally was arrested for such operation and fined. In the commission report it was said:

> It is our opinion, and we find, that the statutory construction of this provision does not preclude the department from granting the application in this case. The failure to comply with the laws of the state of Washington, referred to in the statute, must be construed to be an intentional continuing failure; *i.e.*, an application is required to be denied, under this section, if the applicant has failed to comply with the laws for a continued period, knowingly and intentionally, either prior or subsequent to the time he made application for permit. Any other construction of this statute would be unreasonable as it would bar applicants who might have unintentionally violated the law through lack of knowledge that it applied to their particular operation. In this case, applicant had operated without a permit but upon learning that such was necessary if he were to continue his transportation business, he immediately applied for a permit in compliance with the Truck Act, and since applying has not engaged in any transportation for compensation.

Re Kercheval (Order MV No. 35985, Hearing No. 2557).

Commission Assumes Jurisdiction to Fix Ferry Rates

THE Michigan commission held that it had jurisdiction over rates of a ferry company where a county which had granted a ferry a right to operate and the ferry company itself both denied the existence of any agreement between the

county and the ferry company. The Michigan statutes give the commission jurisdiction over rates for transportation of persons and freight by water, provided that "a ferry company operating within any municipality under an agreement with such municipality shall not be affected either as to fares or operation by this act."

In Michigan a county is a municipal corporation, and for certain purposes is considered a municipality. The commission said that if it be conceded that a county is a municipality within the meaning of that term as used in the act, still the operations of the ferry would not fall within the exception, where there was no agreement between the county and the ferry company.

The company was operating under a license which would expire within three years. During any given year the company has only three months of profitable operation. The service performed in the other months is more for the benefit of the public.

The state commission, therefore, was of the opinion that the controlling factor in approving a schedule of rates for this company should be "the nature of the services rendered."

It was disclosed that the ferry company had been carrying its own risk and did not have marine insurance. The commission was of the opinion that such a situation should not be permitted to continue and that the company should be required to obtain insurance for the protection of the public using the ferry. It was further of the opinion that the company should keep accounts by the double entry method, which should be complete in every respect. *Re Pardridge & Tausend (D-3334).*

Jurisdiction to Prescribe Rules

A PROCEEDING instituted on motion of the Wisconsin commission for the purpose of considering a revision and codification of existing orders, rules, regulations, and practices pertaining to the furnishing of electric service by public utilities resulted in the establishment of new rules and regulations. Some of the companies, in acceding to the inclusion of various provisions, contended that the commission was without statutory authority to prescribe any rules covering the subject matter of these provisions. They did not contend that the rules were unreasonable but that they were beyond the powers of the commission.

The commission is given statutory authority to prescribe general rules and regulations with respect to certain specified matters such as inspections, audits, uniform accounts, accuracy of meters, and safety of construction. It was argued that nowhere in the statute was the commission empowered to prescribe general rules and regulations with respect to such subjects as the refusal or discontinuance of service, the inspection of structures and equipment, the obligation of utilities upon relocation of poles or obligation upon changing the type of service, provisions covering guaranties and deposits, requirements as to billing customers, and provisions for the location of meters.

The commission was of the opinion that the construction of the statutes urged by the objectors was far too narrow and restricted. The construction urged, it was said, would emasculate, if not indeed nullify, the statutory provision that the commission is vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things necessary and convenient in the exercise of such regulatory power and jurisdiction.

This provision had been described by the supreme court of the state as giving the commission "the broadest of legitimate powers in that regard so as to enable it to supply details of administrative works." The commission said:

> The undeniable rule that the powers of the commission must be found within the four corners of the statute creating it does not require that the regulatory act must be given such narrow construction as to preclude the exercise of any power which is

not literally and expressly enumerated in the statute. The statute is entitled to a liberal construction in the light of its entire plan and purpose and within its four corners are included not only those powers which are expressly defined but also those which are raised by necessary implication.

The commission discussed the meaning of the term "reasonably adequate service and facilities," embracing such matters as "accepted good practice," reasonably continuous supply of energy accurately measured, interruptions of service, avoidance of interference with such other operations as those of electric railroad signals and services rendered by communication systems, and a generating and distribution system adequate to make possible the supply of energy at standard voltages within permissible variations. *Re Service Rules for All Electric Utilities in Wisconsin (2-U-911).*

Pennsylvania Commission Makes Final Rate Order in Edison Case

THE predecessor of the present Pennsylvania commission began an investigation of rates of the Edison Light & Power Company in January, 1936. After the enactment of a new Public Utility Law, in 1937, temporary rates were prescribed, but these were vigorously contested in the Federal courts until, after a decision of the United States Supreme Court in Driscoll *v.* Edison Light & P. Co. (1939) 307 US 104, 28 PUR(NS) 65, the case came again before the commission for the purpose of fixing permanent rates. A permanent rate order has now been entered.

Fair value of the used and useful property was determined by giving weight to reproduction cost, original cost, and book cost, as well as other elements which might be pertinent. Both accrued and annual depreciation were based upon age and life estimates, using the straight-line and 4 per cent compound interest methods. It was said in part:

Depreciation accounting has been required by electric public utilities in Pennsylvania since January 1, 1919, when the first uniform system of accounts became effective. Uniform systems have been provided to establish uniformity and to make regulation effective. Respondent's financial and operating statements and other data in the annual reports were predicated upon book entries generally in conformity to the requirements imposed by the uniform system. It is evident, therefore, that the facts recorded must be given considerable weight, particularly in view of annual affidavits by responsible officials in verification of such facts.

No separate allowance was made for going value although this element was considered with others in the final determination of fair value. Donated capital was excluded.

Evidence relating to contemporary money rates, bond yields, preferred stock yields, and earnings on common stock by regulated and unregulated industry over a long period of years were considered in fixing the return allowance. It was said that the Supreme Court's opinion had emphasized the importance of evidence of this type. A return allowance of 6 per cent was held to be reasonable, but Commissioner Buchanan in a concurring opinion criticized the allowance of more than 5½ per cent.

He also criticized reproduction cost and stated that this would be a splendid opportunity "to escape the fog into which speculations based on Smyth *v.* Ames have enveloped the practical task of administering systems of utility regulation."

Costs covering life insurance premiums on employees and payments to employees for suggestions tending to improve operation were allowed as an operating expense, as well as the company's pension payments to employees. The cost of an exhibit at the World's Fair was held to be a nonrecurring item which should be disallowed as an operating expense. *Pennsylvania Public Utility Commission v. Edison Light & Power Co. (Complaint Docket No. 11108).*

Other Important Rulings

THE New Jersey board, in authorizing curtailment of passenger train service because of decreased patronage, said it must measure the number of passengers to be served with the losses incurred by the railroad in serving such passengers, that in considering these two factors the board must not lose sight of what effect constantly recurring losses in short line operations will have upon the continued operation of the entire system, and that while such losses are not wholly controlling, nevertheless the relation of operating losses to the number of passengers carried is some gauge in determining whether some train service may reasonably be eliminated. *Re Delaware, Lackawanna & Western Railroad Co.*

The supreme court of Wisconsin held that a manufacturing company was liable for demurrage on cars placed on its tracks for loading and unloading where the cars were ready for return to the railroads and the company did not release them during a strike at its plant. *Scandrett et al v. Worden-Allen Co. 299 NW 52.*

The Missouri commission, in ordering the construction of a railroad crossing which, it was held, would not be unduly hazardous, declared that the commission was required to consider the question of whether the public necessity for the establishment of the crossing overshadowed the element of hazard incident to such crossing. *Nodaway County Court v. Chicago, Burlington & Quincy Railroad Co. (Case No. 10078).*

The Pennsylvania commission ordered a railroad company to file an application seeking commission approval of the abandonment of service on a certain portion of branch line where the company stated that removal of tracks without first seeking approval was made at the urgent request of the Department of Highways and in the spirit of coöperation with the commonwealth in connection with a railroad crossing. The commission said that although it appeared that the company acted in good faith, the jurisdiction of the commission was clear from the admitted factual situation viewed in the light of the provisions of the Public Utility Law and the applicable principles of general law. The abandonment of service, it was said, is not proper or legally valid without state commission approval. *Public Utility Commission v. Delaware, Lackawanna & Western Railroad Co. (Complaint Docket No. 13429).*

A municipality may, according to the supreme court of Arkansas, use profits above operating expenses and maintenance costs of its waterworks system for purposes not related to the plant. *Mathers v. Moss et al. 151 SW(2d) 660.*

The California commission approved a contract for the sale of surplus gas for a 15-year period but with the admonition that such period would normally not be justified and the commission might modify the contract at any time in view of requirements of regular customers and the need of conserving the state's gas supply. *Re Pacific Gas & Electric Co. (Decision No. 34209, Application No. 24118).*

The California commission held that where a public utility was seeking to acquire an existing water distribution system, the cost of the land on which certain springs were located would be recognized in determining value, but not an additional cost for water rights, since the water in the springs belonged to the land and some of it at least had been used to aid the sale of land. *Re Lake Gregory Water Co. (Decision No. 34162, Application No. 24084).*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Points of Special Interest

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TITLES

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NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re Limited Liability Rates

[Case No. 10479.]

Rates, § 318 — Carriers — Varying liability.

1. Variations in rates due to the varying liability which the carrier assumes in transporting property are generally in the public interest, and it is desirable, where shippers are willing voluntarily to limit the liability of the carrier to lower amounts, that rates to be charged for such transportation shall be less than where the shipper desires to fix a higher value for the property in case of loss, injury, or damage, although this principle may not be extended to all commodities, p. 258.

Rates, § 184 — Burden of proof — Carriers — Limited liability rates.

2. The burden of proof is upon a carrier applying for the establishment of limited liability rates, and he should be prepared to show that the establishment of such rates in the case of specific commodities will be in the public interest, p. 258.

Rates, § 241 — Filing by agents — Limited liability rates.

3. A statute authorizing a carrier to file limited liability rates does not contemplate the delegation of authority so that agents may be authorized to file such rates for any carrier who makes them his agents, p. 259.

Rates, § 427.2 — Motor carriers — Limited liability rates — General order.

4. The establishment of limited liability rates of motor carriers, if in the public interest, should be authorized by general order applicable to specific commodities, classes of commodities, or classes of carriers until there appears some special reason why such general action is not in the public interest, p. 259.

Rates, § 134 — Comparisons — Limited liability rates.

5. The establishment of limited liability rates by motor carriers should not be permitted merely upon proof that they have been in use elsewhere, p. 259.

Rates, § 427.2 — Motor carriers — Limited liability rates — Cost factor.

6. Any common carrier by motor vehicle who desires to establish limited liability rates must be prepared to show that the rates he suggests are fair and reasonable and principally that the variations submitted represent variations in the actual cost of the service, p. 259.

Rates, § 426 — Motor carrier schedules — Adherence to — Limited liability.

7. Motor carriers should not be authorized to use or decline to use any schedule of limited liability rates which it may establish, but, if such rates are established by a carrier, it should accurately apply them in all cases; there should be no option exercised by the carrier but by the shipper, p. 260.

[June 24, 1941.]

NEW YORK DEPARTMENT OF PUBLIC SERVICE

PROCEEDING *on motion of Commission as to whether common carriers of property by motor vehicle should be authorized to establish limited liability rates; rulings made.*

APPEARANCES: David Brodsky, New York city, Attorney, for Inter State Motor Tariff Bureau, Inc., Furniture Delivery Association, Inc., Household Goods Carriers Bureau, Inc., New York State Warehousemen's Association, Eastern New York Transport Association, Inc.; Solomon Granett, New York city, Attorney, for State Parcel Corporation; Louis Kletter, New York city, Secretary State Parcel Corporation; B. J. McHugh, Albany, Assistant Manager, New York State Railroads, Motor Carrier Committee; H. C. Willson, New York city, Secretary, Official Classification Committee.

By the COMMISSION: It is a general rule of law that no common carrier may by its own action limit its liability for loss, damage, or injury to property while it is being transported by such common carrier. Statutes have been frequently enacted relating to this matter and the Public Service Commission Law relating to common carriers by motor vehicle provides in § 63-v:

". . . No contract, stipulation, or clause in any receipt or bill of lading shall exempt or be held to exempt any common carrier by motor vehicle from any liability for loss, damage, or injury caused by it to property from the time of its delivery for transportation until the same shall have been received at its destination and a reasonable time shall have elapsed after notice to consignee of such arrival to permit of the removal of such property; provided, however, that when *expressly authorized* or required by order of the Commission *a carrier* may establish and maintain rates dependent upon the *value declared in writing by the shipper or agreed* upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released and shall not, so far as relates to values, be held to be a violation of this article. . . ." (Italics supplied.)

No action has heretofore been taken by this Commission and no applications have been made for such authorization until recently. Two applications having been made, the Commission decided to hold a hearing before determining its policy. A hearing having been held and the Commission having reached certain general conclusions, it is believed that these should be announced before any final action is taken upon the pending applications or any others that may be made.

[1, 2] The Commission is of the opinion that variations in rates due to the varying liability which the carrier assumes in transporting property are generally in the public interest and that it is desirable where shippers are willing voluntarily to limit the liability of the carrier to lower amounts, the rates to be charged for such transportation should be less than where the shipper desires to fix a

higher value for the property in case of loss, injury, or damage.

We are not prepared to say that this principle should be extended to all commodities. The general rule of law stated above should be followed unless it is shown affirmatively that it is in the public interest in the case of specific articles or commodities that rates should vary with the limited liability value fixed by the shipper. Thus, in any application for the establishment of limited liability rates, the burden of proof will be upon the applicant and he should be prepared to show that the establishment of such rates in the case of specific commodities will be in the public interest.

[3] One of the pending applications asks that authority to establish limited liability rates should be granted to agents and that they should be authorized to file such rates for any carrier who makes them his agent. We do not so construe the Public Service Law. It provides for the express authorization of "a carrier" and does not contemplate the delegation of authority. The Commission may authorize specific carriers by name or it may authorize all carriers in a class or all carriers operating under due authority granted by this Commission.

[4] If the establishment of limited liability rates are in the public interest, they are such not because of the peculiar condition of any one carrier but because conditions generally justify the establishment of such rates. In any event, the Commission has decided that if any such authority is granted, it will be granted by general order applicable to specific commodities, classes of commodities, or classes of carriers until there appears some special reason why such general action is not in the public interest.

Testimony was given of a general character relative to the principles upon which limited liability rates should be established. It was agreed that in general variations in such rates should represent the difference in the cost of insurance, but no witness was able to testify what such costs were in any given case or how they could be fixed. The pending applications suggest schedules of rates for certain commodities but there was no testimony that these variations represented variations in cost of service.

[5, 6] The only justification suggested was that the rates submitted had been in operation elsewhere. We are not prepared to permit the establishment of limited liability rates in this new field merely upon the proof that they have been in use elsewhere. Before a departure is permitted from the general rule that a carrier may not limit its own liability, any common carrier by motor vehicle who desires to establish limited liability rates must be prepared to show that the rates he suggests are fair and reasonable and principally that the variations submitted represent variations in the actual cost of the service. No such proof has as yet been submitted and the Commission, therefore, is not prepared at this time to authorize any carrier to establish any schedule of limited liability rates for any class of commodities.

There is one peculiarity of the suggested rates that calls for further comment. At present, the rates being charged cover unlimited liability and it is suggested that the liability of the carrier should hereafter be limited to

certain suggested amounts per article or per shipment when these rates are paid, and that for any value declared by the shipper in excess of these minima, shippers should pay an additional charge to the "base rates." Obviously, these proposals in and of themselves provide for increased rates unless the base rates are lowered; but there is no proposal to lower the base rates if the Commission permits the establishment of limited liability rates. Without any such reduction in base rates, the proposals have two aspects: the introduction of limited liability rates and increased revenues. This is a subject which will necessarily receive attention in any further hearings that are held.

[7] It has been suggested that carriers be authorized to use or decline to use any schedule of limited liability rates which it may establish. Such is not our conception of proper rate making. If limited liability rates are established by a carrier, it should accurately apply them in all cases. There should be no option exercised by the carrier. The exercise of an option is the privilege of the shipper, and if the liability is to be unlimited, the tariff must so provide.

WASHINGTON DEPARTMENT OF PUBLIC SERVICE

Department of Public Service

v.

A. T. Trudeau

[Order M. V. No. 35518, Hearing No. 2541.]

Discrimination, § 4 — Collection of undercharges.

1. A motor carrier who has violated the law and the rules, orders, and tariffs of the Department by charging and collecting rates less than the lawful rates prescribed should be required to collect the full amount of the rebates or undercharges from the shipper and furnish proof to the Department that he has done so, p. 262.

Fines and penalties, § 9 — Action against shipper — Rebates.

2. The record in a case where unlawful rebate or undercharges are proven should be transmitted to the attorney general of the state with a recommendation that action be started in the name of the Department, as provided by law, for the collection from the shipper of three times the amount of the rebates received by him from the carrier, or that such criminal action be taken against the shipper as may be deemed proper, when it appears that the shipper has demanded rebates against the protest of the carrier and it is plain that the shipper must be rather well informed as to freight rates, p. 262.

Discrimination, § 23 — Rebates — Fault of shipper.

3. A shipper who obtained rebates from a common carrier by quoting

the rates he will pay, against the protest of the carrier, without reference to the proper and lawful tariffs of the Department, cannot be excused, as it is as much the duty of the shipper to pay the lawful rate for transportation as it is the duty of the carrier to collect it, p. 262.

Certificates of convenience and necessity, § 147 — Suspension of permit — Unlawful rebates.

4. A common carrier permit should be suspended when it is proven that the carrier has violated the law and rules, orders, and tariffs of the Department by charging and collecting rates different from and less than the lawful rates prescribed by the Department and has violated the rules and orders of the Department by transporting property owned or being bought or sold by him in his vehicle as a private carrier while the vehicle was registered under his common carrier permit and being used by him in his common carrier operation, p. 262.

[June 20, 1941.]

COMPLAINT *and order to show cause as the result of an investigation of an authorized carrier, involving rebates or undercharges and violation of rules and orders with respect to transportation of property; common carrier permit suspended, respondent ordered to collect undercharges, and respondent ordered to cease and desist from violating rules.*

By the DEPARTMENT: This matter came on regularly for hearing at Aberdeen, Washington, pursuant to notice duly given, on the 9th day of May, 1941, before Ralph J. Benjamin, supervisor of transportation, and Joseph Starin, examiner; G. D. Forbes, reporter.

The parties were represented as follows: Complainant, by Clifford O. Moe, Assistant Attorney General, Olympia; Respondent, by self, Hoquiam.

Nature and History of the Proceedings

Complaint and order to show cause was entered in this proceeding by the Department of Public Service of Washington (hereinafter referred to as the Department) on its own motion as the result of an investigation of this carrier's records conducted by authorized field agents of the Department.

A. T. Trudeau (hereinafter referred to as respondent) is the holder of Common Carrier Permit No. 6870, issued to him by the Department under authority of Chap. 184 of the Laws of 1935 as amended. Respondent is subject to the rules, orders, regulations, and tariffs issued by the Department under the provisions of the statutes pertaining to and authorizing the regulation of motor freight carriers for compensation.

The complaint alleges that respondent has violated the laws regulating common carriers and the rules, orders, and tariffs of the Department. The complaint further charges that respondent is also engaged in more than one class of motor carrier freight operation with the same equipment, in violation of the rules and orders of the Department.

Respondent was ordered to appear before the Department at a public

hearing in Aberdeen, Washington, May 9, 1941, to answer to the charges contained in the complaint and order to show cause why his common carrier permit should not be canceled or suspended or other penalty levied upon him as provided by law.

Attached to the complaint herein was a bill of particulars setting forth the specific violations of the law and the rules, orders, and tariffs of the Department alleged to have been committed by respondent.

The public hearing was held as scheduled. Witnesses were sworn and gave testimony. The bill of particulars hereinabove referred to was admitted in evidence as Exhibit One.

At his own request, respondent was sworn and gave testimony. He admitted the truth of all of the charges contained in the bill of particulars, Exhibit One herein.

After careful consideration of the record, the Department makes and enters the following findings of fact:

Findings of Fact

The Department finds:

[1–4] 1. That respondent has violated the law and the rules, orders, and tariffs of the Department by charging and collecting rates different from and less than the lawful rates prescribed by the Department in the transportation of twenty-three shipments of box shook between Raymond, Washington, and Yakima, Washington, in the period from June 17, 1940, to November 29, 1940.

2. That respondent has violated the rules and orders of the Department (Rule 16) by transporting property owned or being bought or sold by him in his vehicle as a private carrier while said vehicle was registered under his common carrier permit and being used by him in his common carrier operation.

We have here a plain and well-proved case of rebating by a carrier to a shipper. It is our opinion that respondent should be required to collect the full amount of the rebates or undercharges from this shipper and furnish proof to the Department that he has done so. The Department also should transmit the record in this case to the attorney general of the state of Washington with a recommendation that action be started in the name of the Department, as provided by law, for the collection from this shipper of three times the amount of the rebates received by him from this carrier, or that such criminal action be taken against this shipper as may be deemed proper.

It is our further opinion from the record, and having seen the bearing and demeanor of respondent on the witness stand, that respondent knew and was aware of the proper rates applicable and he is willing to comply with the law and the rules and orders and tariffs of the Department. He has been careless and negligent in not insisting that the shipper pay proper rates as was his duty as a common carrier.

The shipper cannot be excused. The record shows that the shipper quoted the rates he would pay and the carrier accepted them, although he protested and tried to get more. The inference is plain, that the shipper dictated the rate that he desired, without reference to the proper and lawful tariffs of the Department.

It is as much the duty of the ship-

per to pay the lawful rate for transportation as it is the duty of the carrier to collect it. Rebates received by shippers are unlawful whether received in ignorance or with knowledge. It seems plain to the Department that any steady shipper, such as the one in this case, must be rather well informed as to freight rates.

The Department is also of the opinion that respondent must either request from the Department exemption from the rule against dual operations and make a proper and sufficient showing of the necessity of such an operation, or he must surrender either his common carrier permit or cash buyer's license.

Order

Wherefore, it is *ordered:*

1. That Common Carrier Permit No. 6870, standing in the name of A. T. Trudeau, be, and it is, hereby suspended for a period of twenty days, the period of suspension to commence at 12:01 A.M. June 21, 1941. Respondent is hereby *ordered* to cease and desist all common carrier operations during this period.

2. That respondent be, and he is, hereby *ordered* and *directed* to ascertain and collect from the shipper or shippers involved herein the full amount of the rebates or undercharges granted or given by him to said shipper or shippers, the amount being the difference between the sums actually charged and collected for the shipments shown in Exhibit One and the lawful tariff rate prescribed by the Department;

3. That respondent furnish proof satisfactory to the Department that he has collected from the shipper or shippers herein the full amount of the undercharges or rebates;

4. That respondent immediately cease and desist from violating the Department's rules prohibiting operation as a common carrier and cash buyer on the same vehicles,

5. That respondent's common carrier permit be, and it is, further suspended until he has complied with paragraphs 2, 3, and 4 of this order;

6. That the Department retain jurisdiction of this cause for one year from date hereof.

FEDERAL POWER COMMISSION

Re Chicago District Electric Generating Corporation

[Opinion No. 63, Docket No. IT-5500.]

Electricity, § 2.1 — Jurisdiction of Federal Commission — Effect of state regulation.

1. Neither an electric generating company's action in submitting power

agreements to state Commissions for filing nor the action of these Commissions in permitting them to be filed governs the question of jurisdiction of the Federal Power Commission over the generating companies, since that problem is one of fact and law, p. 268.

Interstate commerce, § 22 — What constitutes — Sale and transmission of electricity.

2. A sale for resale and transmission of electric energy in interstate commerce is involved where a generating company, incorporated and owning and operating a generating station and transmission facilities in one state, transmits energy to the state line, at which point it is delivered and sold to an electric corporation of an adjoining state, commingled with energy generated in the purchasing company's own plant and from other sources, and resold to consumers in the other state, p. 268.

Electricity, § 2.1 — Jurisdiction of Federal Commission — Interstate sale and transmission of electricity.

3. The interstate sale and transmission of electric energy by a generating company, incorporated and operating in one state, to a distributing company, incorporated and operating in an adjoining state, is subject to the jurisdiction of the Federal Power Commission, p. 268.

Interstate commerce, § 8 — What constitutes — Transmission of electricity — Partial interstate route.

4. Transmission of electric energy in interstate commerce is not involved when a company, incorporated and operating in one state, generates the energy and sells it to a domestic corporation operating entirely within that state, although a portion of the electric energy supplied enters an adjoining state but reënters the state of origin without any energy being taken out or used in the other state, p. 268.

Valuation, § 7 — Powers of Federal Power Commission — Evidence of reproduction cost.

5. The Federal Power Commission is authorized to determine whether in a specific case evidence of reproduction cost is a necessary concomitant of rate base determination, p. 269.

Valuation, § 36 — Rate base — Actual legitimate cost.

6. The Federal Power Commission is directed by statute only to determine the actual legitimate cost and the depreciation of utility property for rate making in the normal case, although the ascertainment of facts other than actual legitimate cost which bear upon fair value in rate-making procedures may be ascertained when the exigencies of a particular situation require such a determination, p. 269.

Valuation, § 39 — Rate base — Reproduction cost.

7. It would be inappropriate, in a rate proceeding, to engage in the long, tortuous, and essentially meaningless process of first attempting to determine the amount of the extremely speculative element of reproduction cost and then attempt to determine the equally speculative factor of how much weight should be given to the first speculation in arriving at a conclusion with respect to fair value, when historical records are in such shape that prudent investment may be accurately determined; reproduction cost evidence is inherently fallacious and should be confined to those rare cases where evidence of original cost or prudent investment cannot reasonably be assembled, p. 269.

Return, § 11 — Basis — Actual legitimate cost — Depreciation factor — Working capital.

8. The rate base of an electric generating company was held to be the actual legitimate cost of the property used and useful in furnishing the service subject to the jurisdiction of the Federal Power Commission, less the existing depreciation in such property, plus the working capital necessary to render such service, p. 269.

Valuation, § 140 — Interest during construction — Cost of money — Payments to affiliates.

9. Interest during construction of an electric generating plant in excess of 6 per cent simple interest, paid by a subsidiary to affiliated companies which advanced construction funds, was held to be excessive, notwithstanding evidence of weighted average cost of money to a parent company and the use of common stock to represent a part of construction advancements, p. 273.

Valuation, § 215 — Land for future use.

10. Land acquired by a generating company to provide for anticipated future storage and handling of coal and land held for possible future use in providing a barge channel should be excluded from the rate base as not presently used and useful, p. 273.

Valuation, § 175 — Deficits in earnings — Period of suspended building.

11. Deficits in earnings during a period when building of a generating plant was suspended because of lack of demand should not be capitalized, p. 274.

Valuation, § 168 — Deferment expenses — Suspension of construction.

12. So-called "deferment expenses" representing carrying costs during a period of deferment of construction of a generating unit upon which construction was suspended because of the lack of demand for energy should not be included in the rate base upon the theory that the prudent investment doctrine permits such inclusion, p. 274.

Depreciation, § 51 — Electric generating plant.

13. An annual depreciation allowance of 3 per cent on a straight-line basis was approved in the case of an electric generating plant, p. 275.

Valuation, § 104 — Accrued depreciation — Accumulated reserve.

14. The accumulated depreciation reserve, when based on proper annual charges, is the best measure of accrued depreciation in utility property, p. 275.

Depreciation, § 26 — Annual and accrued — Harmony.

15. Annual depreciation expense and actual existing depreciation must be harmonized, p. 275.

Valuation, § 307 — Working capital — Electric generating company — Relation to operating expenses.

16. Working capital of an electric generating company for cash operating requirements was based on an over-all lag of forty-five days from the beginning of service (instead of a claimed lag of sixty days), in addition to allowances for fuel, materials and supplies, and prepaid insurance, but without a cash allowance for operating contingencies, p. 276.

Apportionment, § 54 — Electric generating plants — Kilowatt basis.

17. Allocation of an electric company's actual legitimate cost of generating facilities, less depreciation, plus an allowance for working capital, on a kilowatt basis, was approved, p. 276.

Return, § 44 — Reasonableness — Absence of risk — Economic conditions.

18. The fair return to be allowed an electric generating company, the entire costs of which are guaranteed under long-term contracts with distributing companies, must be consistent with the prevailing economic conditions and the virtual absence of risk in the conduct of the business, p. 277.

Return, § 87 — Electric generating company.

19. A 5½ per cent rate of return was held to be fair and reasonable in the case of an electric generating company operating an enterprise wherein even the ordinary risks of public utilities had been almost eliminated, p. 277.

Expenses, § 114 — Excess profits tax.

20. An increase in excess profits tax of an electric generating company should be allowed as a proper additional item of expense, p. 279.

[July 16, 1941.]

INVESTIGATION *of rates of electric generating company; rate reduction ordered.*

APPEARANCES: Irvin Rooks, Francis X. Busch, Lee A. Freeman, and Cassius M. Doty, for the respondent; John E. Cassidy, Attorney General, and Abe L. Stein, Assistant Attorney General, for the Illinois Commerce Commission; Moie Cook, Commissioner, for the Public Service Commissioner of Indiana; George Slaff, for the Commission.

By the COMMISSION: On December 15, 1937, the Commission adopted an order instituting an investigation to determine (a) whether the agreements, or any provisions thereof, under which the Chicago District Electric Generating Corporation sells electric energy, violate any provisions of the Federal Power Act, or any regulation or order thereunder, and (b) whether any rates and charges made or received by said respondent in connection with the transmission and sale of electric energy (subject to the jurisdiction of this Commission) to the Northern Indiana Public Service Company, the Public Service Company of Northern Illinois, the Commonwealth Edison Company, and the Public Service Company of Indiana under said agreements and practices pertaining to such rates and charges, (1) make or grant any undue preference or advantage to any person or subject any person to any prejudice or disadvantage, or (2) constitute any unreasonable difference in rates, charges, service, or facilities, either as between localities or as between classes of service, or (3) are unjust, unreasonable, or unduly discriminatory.

The respondent is a corporation organized and existing under the laws of Indiana, and as such it owns and operates an electric generating plant

commonly known as the State Line Station, together with facilities for the transmission therefrom of electric energy, located at the extreme northwest corner of and wholly within the state of Indiana. In fact, respondent's western property line, the Illinois-Indiana state line, and the eastern boundary of the city of Chicago are identical.

Pursuant to agreements dated December 22, 1928, the State Line Generating Company, the predecessor of the respondent, entered into separate agreements with the Northern Indiana Public Service Company, the Public Service Company of Northern Illinois, the Commonwealth Edison Company, and the predecessor of the Public Service Company of Indiana, under which the aforesaid companies became entitled, for a term expiring June 30, 1979, to the electric energy available from the first unit of the generating company in the following proportions: 20 per cent, 30 per cent, 40 per cent, and 10 per cent, respectively.

Under the aforesaid agreements, each of the purchasing companies agreed to pay to respondent's predecessor its share of fixed charges (as therein defined), on the investment of the State Line Station in relation to the proportionate part of the net capacity of the generating station assigned to the production of energy to be sold to each of said companies. In addition to the payment of a proportionate share of the fixed charges, each of the purchasing companies agreed to pay to the generating company its proportionate part of the generating company's operating expenses, such operating expenses to include (1) management and general expenses, (2) operating labor expense, (3) expense of operating supplies, excluding fuel, (4) expense of maintenance and repairs, including labor and materials, and (5) reasonable charges on account of employees' benefits, including proportionate charges for service annuities and savings funds. Moreover, in addition to the fixed charges and operating expenses referred to, the purchasing companies also agreed to pay to respondent's predecessor a fuel charge.

On January 1, 1939, during the progress of this investigation entirely new agreements were made for the disposal of the electric energy generated by the respondent company. Under the new arrangements Commonwealth Edison Company (hereinafter referred to as Edison), and Northern Indiana Public Service Company (hereinafter referred to as NIPSCO), purchase the entire output from State Line Station. Moreover, the Edison Company owns 100 per cent of the voting stock of the respondent here under investigation and obtains delivery of approximately 80 per cent of the energy generated and produced at said station.

The agreements with each of these two customer companies are similar except as to the amount of energy delivered to each. The charges provided are the costs of operating the plant and transmission facilities including an allowance for return, taxes and depreciation. The total costs are allocated between and recovered in revenue from Edison and NIPSCO.

During the course of our investigation respondent made a number of

changes in its agreements. On November 1, 1938, it reduced the previously established allowance for fixed charges by 1 per cent from 12½ per cent to 11½ per cent, thereby reducing its total charges approximately $420,000 per year. Other changes in the agreements were made until July 1, 1939, when the present two agreements were executed and made effective as of January 1, 1939.

Hearings were held both in Chicago, Illinois, and in Washington, D. C. These hearings were concluded in October, 1940, with the evidence in the record brought down to June 30, 1940. From time to time during the hearings representatives of the Indiana Public Service Commission and the Illinois Commerce Commission sat with our trial examiner, who presided.

Jurisdiction

[1–3] At the outset, let us dispose of the question of jurisdiction. Respondent asserts that it is not subject to the jurisdiction of this Commission because it is now regulated by the Public Service Commission of Indiana; that the present agreements were submitted to and approved by both the Illinois Commerce Commission and the Public Service Commission of Indiana, and that § 201(b) of the Federal Power Act, 16 USCA § 824, provides that we ". . . shall not have jurisdiction, except as specifically provided . . ., over facilities used for the generation of electric energy. . . ."

Obviously, neither respondent's actions in submitting the agreements for filing to the two state Commissions nor the actions of these Commissions in permitting them to be filed govern the question of jurisdiction. That problem is one of fact and law. The record discloses determining facts that are clear and indisputable.

Respondent is an Indiana corporation. Its generating station and transmission facilities are in Indiana. The electric energy supplied Edison is generated in Indiana and transmitted to the Illinois-Indiana state line at which point it is delivered and sold to Edison. The Edison Company is an Illinois corporation. The electric energy received is commingled with electric energy generated in its own plants and from other sources and resold to consumers in the city of Chicago. Clearly, there is involved a sale for resale and transmission of electric energy in interstate commerce. It is equally clear that such sale and transmission of electric energy is subject to the jurisdiction of this Commission under the provisions of the Federal Power Act, notwithstanding respondent's claim of exemption under § 201(b). To conclude otherwise would do violence to the express provisions of the act.

[4] NIPSCO is an Indiana corporation whose operations are entirely within that state. A portion of the electric energy supplied by respondent to NIPSCO enters the state of Illinois but reënters the state of Indiana without any such electric energy being taken or used within the state of Illinois. It appears, therefore, that the energy obtained by NIPSCO from the respondent does not involve a transmission of electric energy in interstate commerce as defined in § 201

(c) of the Federal Power Act, 16 USCA § 824.[1]

Prudent Investment

[5–8] The record before us raises the question of the necessity, under the Federal Power Act, for considering evidence of the reproduction cost of respondent's property. When the company sought to introduce evidence of the reproduction cost of the property as of June 30, 1940, the examiner, upon motion of Commission counsel, excluded such evidence. Hence, there is no reproduction cost evidence in the record.

The evidence discloses, however, that the property of the respondent was constructed substantially in two large blocks. Out of a total gross investment of approximately $41,000,000, approximately $26,000,000 was invested in the period 1925–1929 and approximately $15,000,000 in the periods 1929–1932 and 1936–1938. It is agreed by all that the respondent's cost records are complete and well maintained. There is no difficulty whatever in ascertaining promptly and accurately from the books of the respondent the cost of, or the prudent investment in, its property.

The answer to the problem of whether we have been authorized by Congress to disregard reproduction cost evidence in fixing the rate base is to be found in § 208(a) of the Federal Power Act, 16 USCA § 824g. That section provides:

"Section 208. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every public utility, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation, and the fair value of such property."

We are thus authorized, in the first instance, to investigate and ascertain the actual legitimate cost of the property of every public utility. We are likewise authorized to ascertain the depreciation therein. It is when we find it necessary for rate-making purposes in specific cases that we may determine other facts bearing on the "fair value" of such property.

Consideration of the legislative history of § 208(a), together with the clear wording of the section as it stands, leads us to conclude that Congress recognized that although there might be some situations in which evidence of reproduction cost would be a necessary concomitant of rate base determination, this Commission was authorized to determine whether in a specific case such evidence was necessary.

Congress clearly evinced a definite departure from the fair value doctrine of Smyth v. Ames.[2] The experience of the first half of the decade of the thirties had brought home even more strikingly than before the validity of Mr. Justice Brandeis' statement in his dissenting opinion in the Southwestern Bell case,[3] that "The experience of the twenty-five years since that case

[1] 201(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a state and consumed at any point outside thereof; but only in so far as such transmission takes place within the United States.

[2] (1898) 169 US 466, 42 L ed 819, 18 S Ct 418.

[3] Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 292, 67 L ed 981, PUR1923C 193, 43 S Ct 544, 31 ALR 807.

was decided has demonstrated that the rule there enunciated is delusive." Congress recognized the fair value doctrine as an impediment to rate making. It saw plainly the lack of practical workability in a requirement that we be compelled in all rate cases to enter into the elaborate investigations and determinations implicit in any reproduction cost finding when, in most cases, there would be no necessity for any such determination.

Hence we were directed to determine facts other than actual legitimate cost bearing on the fair value of a utility company's property in those situations when we found it necessary in order to do justice in the rate-making process. It was recognized that there still might be some instances of companies subject to our jurisdiction whose historical records were not in such shape that the prudent investment in the property might be accurately determined. In such cases the door was left open to us to consider not only such evidence of actual legitimate cost as might be adduced, but also other facts, such as reproduction cost, which might bear on the fair value of the property.

It would appear, therefore, that this section contemplates the ascertainment of facts other than the actual legitimate cost which bear upon the fair value of the company's property in rate-making procedures when the exigencies of the particular situation require such a determination. In the normal case we were directed, however, only to determine the actual legitimate cost and the depreciation (i. e., the prudent investment) of the utility's property.[4]

The facts in this proceeding are particularly appropriate for the determination of a rate base strictly on a prudent investment basis. This is a situation peculiarly suitable for the application of the statutory power granted us "to escape the fog into which speculations based on Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418, have enveloped the practical task of administering systems of utility regulation."[5]

It would be inappropriate for us in this proceeding to engage in the long, tortuous, and essentially meaningless

[4] Our view that the cost rate base was uppermost in the mind of Congress when the Federal Power Act was adopted is concurred in by the special committee of the Public Utility Law Section of the American Bar Association. This committee concludes:

"It will be noted that the primary duty of the Commission under these two provisions* is to ascertain the cost of the property and the depreciation therein, and that 'other facts which bear on the determination of such cost or depreciation, and the fair value of such property' are to be determined only 'when found necessary for rate-making purposes.' There is here the possible inference that the Congress, when it drafted this provision, was hopeful that the courts would decide that nothing other than the 'actual legitimate cost' of the property would be 'found necessary for rate-making purposes.' However that may be *it is patent that an accounting or cost rate base was dominant in the Congressional mind, and that these very recent statutes in that respect are the very antithesis of some of the older state statutes which prescribe the reproduction cost new less depreciation formula.*"

*Section 208 of the Federal Power Act and the corresponding section, § 6, of the Natural Gas Act.

Report to the Council and Public Utility Law Section of the American Bar Association at the annual meeting of the ABA, September, 1940, by the special committee to Report on Recent Developments in the Field of Public Utility Valuation and Accounting. — pp. 14 and 15.

[5] Concurring Opinion of Mr. Justice Frankfurter and Mr. Justice Black in Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 123, 83 L ed 1134, 28 PUR(NS) 65, 77, 59 S Ct 715.

process of first attempting to determine the amount of the extremely speculative element of the reproduction cost of respondent's property, and then attempting to determine the equally speculative factor of how much weight should be given to the first speculation in arriving at a conclusion with respect to "fair value."

We have had occasion to observe previously that:

"The main difficulty with the fair value doctrine lies in the reproduction cost element."

"The reproduction cost factor is particularly inappropriate as applied to property of electric and communication utilities."

"The utter impossibility of taking two widely divergent amounts arrived at on wholly different bases, the one (original cost) subject to rather exact measurement and the other (reproduction cost) speculative in the extreme, and combining them reasonably so as to produce a legally sufficient result, has led the public utility regulatory agencies to make a polite bow to the elements mentioned, but to employ in fact either prudent investment or reproduction cost as the sole criterion of value."

"It has been the considered judgment of the great majority of the regulatory Commissions that the use of reproduction cost is not a proper factor in the determination of a valuation."

"The general opinion of regulatory authorities who have passed upon the question of a proper valuation base is overwhelmingly in favor of the prudent investment as opposed to the reproduction cost method."

"In practice the indefensible character of reproduction cost figures stands out in bold relief."

"The pricing process is a monstrous example of guesswork. The present reproduction cost of old equipment which is no longer manufactured can be computed only by some sort of legerdemain."

"The results so unscientifically computed are necessarily permeated with inaccuracies. That such results are inaccurate is known to every Public Utilities Commission."

"The result of this situation is not only that the determination of reproduction cost is extremely difficult, but, as has been pointed out, no two experts can reach an agreement upon the figure to be used."

"The effect of the indefiniteness of the concept of reproduction cost is that the rate base is entirely unpredictable. The utility and the regulatory Commission are, until the final decision, entirely in the dark, and so is the investor."

"The tremendous consumption of time and money in the determination of reproduction cost accomplishes nothing."

"It would be difficult to conceive of anything farther removed from reality than the idea of reproduction cost as it is at present applied by the courts."[6]

Reproduction cost evidence is *inherently* fallacious and should be confined to those rare cases where evidence of original cost or prudent investment cannot reasonably be assembled. This basic and inherent unsoundness is clearly evidenced by the

[6] Brief for the United States Amicus Curiæ, in which this Commission joined, case of Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 83 L ed 1134, 28 PUR(NS) 65, 59 S Ct 715.

wide disparity that exists in the estimates of reproduction cost presented by representatives of utility companies and representatives of municipalities or state Commissions. An examination of reproduction cost evidence in rate cases, reported in PUBLIC UTILITIES REPORTS for the years 1928 to 1933, shows excesses of company reproduction cost appraisals over similar appraisals for the municipalities or Commissions involved ranging from 2.78 per cent, the minimum, to a maximum of 450.66 per cent. The average excess of company appraisals over city or Commission appraisals for each of the six years was determined to be: 1928–29.88 per cent; 1929–48.23 per cent; 1930–33.54 per cent; 1931–52.30 per cent; 1932–105.08 per cent; 1933–53.38 per cent; average for six years 51.50 per cent.

Contrasted with this is the fact that the determination of original cost, or prudent investment, may normally be made from existing books and records of utility companies with expedition, accuracy, and lack of substantial conflict between representatives of the private and public interests.

In the instant case there were but twelve days of hearings. In these twelve days, it is conceded by respondent, every single phase of evidence necessary to the determination of fair and reasonable rates for a forty-million dollar company—with the exception of reproduction cost—was introduced and thoroughly explored in cross-examination. Contrast this situation with the inevitable delays attendant upon the introduction in rate case procedure of the reproduction cost element.[7]

We do not deem it necessary to go into an extensive discussion of the inherent invalidity of reproduction cost evidence. As was pointed out by Mr. Justice Frankfurter in his concurring opinion in Driscoll v. Edison Light & P. Co. (1939) 307 US 104, 123, 83 L ed 1134, 28 PUR(NS) 65, 77, 59 S Ct 715, the fair value doctrine has been "widely rejected by the great weight of economic opinion, by authoritative legislative investigations, by utility Commissions throughout the country, and by impressive judicial dissents."

We have been authorized by Congress to determine the actual legitimate cost of utility properties and the depreciation therein, viz., the prudent investment. We have been directed to determine other facts bearing on the fair value of such property, such as reproduction cost, when found necessary for rate-making purposes. There is nothing which makes a determination of reproduction cost necessary for rate-making purposes in this proceeding. On the contrary, such a determination would be not only valueless but, in fact, obstructive of the orderly regulatory process. We conclude, therefore, that the rate base in this case is the actual legitimate cost of the property used and useful in furnishing the service subject to our jurisdiction, less the existing depreciation in such property, plus the working capital necessary to render such service.

[7] See Mr. Justice Black dissenting in McCart v. Indianapolis Water Co. (1938) 302 US 419, 435, 82 L ed 336, 21 PUR(NS) 465, 58 S Ct 324; see also Mr. Justice Brandeis concurring in St. Joseph Stock Yards Co. v. United States (1936) 298 US 38, 88–92, 80 L ed 1033, 14 PUR(NS) 397, 56 S Ct 720.

The Actual Legitimate Cost of Respondent's Properties

It remains then to determine the rate base in the light of the principles enunciated above.

It is agreed that the recorded book cost of respondent's property as of June 30, 1940, is $41,698,491.62. It is also agreed by the Commission staff and respondent that a total of $59,-295.91 should be deducted therefrom and an amount of $115,949.06 added thereto.[8] There is thus no dispute to this point that recorded book cost should be adjusted to a total of $41,-755,144.77.

[9] The Commission staff claims that $296,396.40 should be deducted from book cost as representing improper charges for interest during construction. Respondent claims that $571,955.38 should be added to recorded interest during the period of actual construction of Units 1 and 2.[9]

An examination of the evidence leads us to conclude that $296,396.40 (the amount in excess of 6 per cent simple interest) should be deducted as not representing legitimate interest payments during construction. Respondent sought to justify its claims by presenting evidence of weighted average cost of money to Edison. Such evidence is not conclusive that an allowance of interest in excess of 6 per cent should be allowed. The payments were made to affiliated companies. The fact that common stock was used to represent a part of construction advancements is of no significance. A rate in excess of 6 per cent simple interest paid by a subsidiary to affiliated companies, which advance construction funds would, under circumstances existing in this proceeding, be excessive; it would not be fair to the rate-paying public.

The conclusion here arrived at by us has ample support in antecedent actions of the Commission and is adhered to by the Interstate Commerce Commission in valuation cases.[10]

[10] Evidence was offered by the Commission's staff in support of making a deduction from recorded book cost, as representing property not used and useful, of $1,327,456, ($1,101,-590 representing buildings and $225,-866 representing land). With respect to the item for land, we find that $109,463 representing the cost of land acquired to provide for anticipated future storage and handling of coal, etc., and the $116,403 representing cost of land held for possible future use in providing a barge channel, making a total of $225,866, represents an investment in property which is not presently used and useful.

The Commission staff recommended that an amount representing the portion of the main station building which was originally reserved for Unit No. 3 be deducted from the rate base.

[8] The $59,295.91, "Organization Expense," should be included in balance sheet account 151, "Capital Stock Expense," instead of in plant accounts. The $115,949.06 represents net cost of certain equipment replaced prior to completion of construction of Unit No. 2 and improperly charged to depreciation reserve. A balancing adjustment should be made in the depreciation reserve.

[9] This is apart from a claim of $2,548,946.36 for additional interest during the deferment of construction of Unit No. 2, discussed subsequently.

[10] Re Chelan Electric Co. 1 Fed PC 102, 113, PUR19133E 332; Re Portland General Electric Co. (1934) 1 Fed PC 161, 183; See also, Ohio Utilities Co. v. Public Utilities Commission, 267 US 359, 362, 69 L ed 656, PUR1925C 599, 45 S Ct 259.

Respondent claims that the entire main station building is presently used and useful in rendering electric service. In the light of all the evidence of record we accept respondent's contention that the amount of $1,101,590 should not be deducted from the rate base.

[11, 12] Respondent seeks to include in the cost of its property a total of $3,098,678.13 as "Carrying Costs during Period of Deferment of Unit No. 2," (unrecorded on its books) referred to in the record generally as "deferment expense." This novel claim is based upon the circumstance that in 1932 respondent suspended the construction of its then still incompleted generating Unit No. 2, because of the lack of demand for energy. Construction of this unit remained suspended from September 1, 1932, to August 31, 1936, when construction was resumed. This unit has since been completed and is now in service.

These deferment expenses are made up of alleged interest charges, taxes, and certain other expenses incurred in connection with this unit during the period of deferment.

The largest part of the total is represented by a claim of $2,548,946.36 for interest.

Respondent seeks to include the expenses within the concept of actual cost or prudent investment upon the apparent theory that the prudent investment doctrine permits such inclusion within the rate base.

Respondent does not claim that Unit No. 2 was either used or useful in rendering electric service during the 4-year period when its construction was suspended. It asserts merely that if construction work had been carried to completion instead of being suspended in 1932, its customers would have been required to pay even greater charges than return and depreciation on the amount now sought to be capitalized even though the energy capable of being produced by this unit "would not have been needed or required by respondent's customer companies." The respondent's proposal in effect is that we permit capitalization of deficits in earnings during the building suspension period. To this we cannot agree, as losses traceable to insufficient capacity or to idle installation cannot properly be capitalized as construction cost. Galveston Electric Co. v. Galveston, 258 US 388, 395, 66 L ed 678, PUR 1922D 159, 42 S Ct 351.

Neither the system of accounts prescribed by the Federal Power Commission nor any other system of accounts prescribed by regulatory Commissions for electric (or other) utilities makes provision for the inclusion of such expenses as a component of construction cost of utility plant. It has consistently been the considered opinion of regulatory Commissions that no such factor may enter into cost of plant.

Consequently, we do not allow the addition to recorded cost of these alleged "deferment expenses," in the sum of $3,098,678.13.

Our conclusion is that the proper total gross cost of respondent's property used and useful in furnishing electric service is $41,232,882.37. Set out below is a tabulation showing the derivation of this amount, as previously pointed out.

Book Cost Units No. 1 and 2 as of June 30, 1940		$41,698,491.62
Deduct:		
Organization Expense	$ 59,295.91	
Interest during Construction	296,396.40	355,692.31
Sub Total		$41,342,799.31
Add cost of air cooling system retired in error		115,949.06
Adjusted Original Cost of Plant		$41,458,748.37
Deduct property not presently used and useful		225,866.00
Gross Cost of Plant presently used and useful		$41,232,882.37

Depreciation

[13–15] Except for a short period of time respondent has followed a consistent and sound basis in recording the annual cost of its property consumed in rendering service, i.e., the annual depreciation. It adopted from the outset a 3 per cent rate on a straight-line basis. It has followed this practice except for the short period noted, when the sinking-fund method was employed.

There is no disagreement between the Commission staff and respondent as to the adequacy and reasonableness of the 3 per cent annual charge on a straight-line basis as representing a proper allowance for annual depreciation. Likewise, there is no disagreement concerning the proposition that if this amount is proper annually then the accumulation of these amounts in a reserve represents the accumulated cost of property which has been consumed in rendering service, i.e., the accrued depreciation.

Respondent did present evidence by one witness as to the accrued depreciation in the property principally on the basis of observation. By this method this witness arrived at a percentage of the property which was claimed as the proper allowance for accrued depreciation. This amount was less than the depreciation reserve. If the result based on such method is correct, then clearly the respondent has been charging the purchasing companies annually in excess of a reasonable amount as depreciation expense and the future allowance should be reduced accordingly. If, however, as respondent claims, the annual charges are reasonable, then clearly, the accumulated reserve based on such charges is the best measure of the accrued depreciation in the property.

The true conception of depreciation leaves no room to doubt that annual depreciation expense and actual existing depreciation must be harmonized. Annual depreciation measures the diminution in service life, capacity, or utility in one year—actual existing or accrued depreciation is the total diminished service life, capacity or utility to the date of inquiry. To accept the one while denying the other is to be illogical and guilty of employing dual standards with resulting injustices to the public or to the utility.

". . . the principles are identical which govern the estimating of loss in service capacity for both accounting and valuation purposes." [11]

The Supreme Court has pointed out on many occasions that there should be consistency between the annual depreciation allowance and the determination of actual existing depreciation.[12]

[11] Re Telephone and Railroad Depreciation Charges (1931) 177 Inters Com Rep 351, 408.

[12] Lindheimer v. Illinois Bell Teleph. Co. (1934) 292 US 151, 78 L ed 1182, 3 PUR (NS) 337, 54 S Ct 658.

The Commission accepts respondent's total accumulated depreciation reserve of $8,383,744.51 as of June 30, 1940 (after correction for an error of $115,949.06) as the best and most reasonable measure of the actual accrued depreciation existing in respondent's entire property as of that date.

Working Capital

[16] The respondent company claims the following for working capital:

(1) Requirements for operating expenses	$ 552,880.11
(2) Fuel (including 90-day supply of coal)	989,182.51
(3) Materials and Supplies	185,983.32
(4) Prepaid Insurance, working funds, etc.	80,582.19
(5) Cash allowance for operating contingencies	200,000.00
	$2,008,628.13

The amounts claimed for fuel and materials and supplies are considered reasonable and proper. The amounts claimed for operating expenses and prepaid insurance, working funds, etc., are unreasonable and the claim for operating contingencies entirely denied.

Respondent's claim for cash operating requirements is based on an over-all lag of sixty days from the beginning of service. Almost half of this time, twenty-six days, is claimed as necessary for the preparation of bills. This is substantially in excess of common experiences and practices and respondent admits that it can be reduced by at least fifteen days. An over-all lag of forty-five days is reasonable and sufficient. Evidence of record discloses that operating expenses requiring cash expenditures in advance of revenues for the year ended June 30, 1940, were $2,293,568.98. A period of forty-five days therefore represents $282,768.78. This sum is the best available measure of operating requirements for the future and that amount is allowed.

The claim for $80,582.19 included allowances for certain working funds and advances to employees and prepaid insurance. Ample allowance has already been made, with the possible exception of prepaid insurance, for these miscellaneous items in the $282,768.78 for operating expenses requirements. The investment in prepaid insurance as of June 30, 1940, was $48,397.18 and this was in excess of the average investment for the preceding 12-month period. This appears to be a reasonable amount to allow for the future.

The total of the amounts allowed for working capital is $1,506,331.79. This is exclusive of the claim of $200,000 for operating contingencies, which we disallow as unreasonable and without substantial support in fact. That the total amount allowed is liberal is clearly evident from the fact that respondent has been operating on a working capital allowance of approximately $1,235,000. Moreover, the company has a minimum of $500,000 on hand at all times as funds received for payment of taxes, but which are in fact in excess of tax payments due.

Allocations

[17] The charges in the present agreements, other than operating expenses, provide for the allocation of respondent's investment in generating facilities, plus an allowance for work-

ing capital, between Edison and NIPSCO on a kilowatt basis. Edison's share is 272/342 and that of NIPSCO, 70/342. To this total is added the respective and separate investment in transmission facilities for each to arrive at a billing base. No deduction is made for accrued depreciation. Operating expenses are billed to each customer on the basis of actual costs incurred for each in the supply of energy.

We adopt the same principle of allocation as does respondent. The respondent, however, in its allocation, used gross investment plus working capital, whereas we use the prudent investment—actual legitimate cost less depreciation—plus working capital.

There follows a statement of the amounts found as reasonable herein and the portion thereof allocable to Edison:

	Total	Allocated to Edison	Basis of Allocation
Generating Equipment	$39,125,324	$31,117,217	Kilowatts
Transmission Facilities	2,107,558	1,181,702	Direct
Total Gross Investment	$41,232,882	$32,298,919	.....
Less: Total Accrued Depreciation	8,383,745	6,567,232	Per $ of Investment
Prudent Investment	$32,849,137	$25,731,687	
Working Capital	1,506,332	1,198,018	Kilowatts
Rate Base	$34,355,469	$26,929,705	

Edison is obligated to pay on a basis of 272,000 kilowatts out of a total installation of 342,000 kilowatts. NIPSCO is obligated to pay on the basis of the remaining 70,000 kilowatts. Accordingly, the allocation to Edison is in the ratio of 272/342.

The total accrued depreciation is $8,383.745. This is $0.2033266799 for each dollar of the total gross investment of $41,232,882. This ratio applied to the total gross investment of $32,298,919 allocated to Edison is $6,567,232, which represents the accrued depreciation applicable thereto. This amount deducted from the gross investment of $32,298,919 results in a prudent investment, allocable to Edison, of $25,731,687. To this there is added an allowance for working capital to arrive at the rate base.

The total working capital of $1,506,332 is allocated on a kilowatt basis. This is in accordance with the billing practice of respondent. Accordingly $1,198,018 is allocated to Edison which, added to the allocated prudent investment of $25,731,687 results in a rate base of $26,929,705.

Rate of Return

[18, 19] The law and principles governing the determination of a fair rate of return are well established. The record contains ample evidence concerning the various factors which must be weighed and considered in arriving at a determination of such rate of return in this particular case.

The Commission is particularly impressed by two facts. First, respondent operates an enterprise wherein even the ordinary risks of public utilities, which are less than most other businesses, have been almost eliminated. Second, yields on high grade pub-

lic utility bonds and securities have never been as low as at present. These two facts which are briefly discussed hereinafter, compel the conclusion that the fair return allowed respondent must be consistent with the prevailing economic conditions and the virtual absence of risk in the conduct of respondent's business.

Essentially the *entire* costs of respondent, including return, taxes, and depreciation, are guaranteed under two long-term contracts. The charges are so designed that irrespective of output respondent is assured of its costs at all times. One of the contracts, which covers approximately 80 per cent of the costs, is with the respondent's parent company, Edison, one of the largest and most successful operating public utilities in the United States. It serves the large, growing and concentrated urban area of the city of Chicago with its numerous and diversified industries. The second contract, which covers the remaining costs, is also with a large and successful public utility whose territory includes the concentrated industrial and thickly populated area of northern Indiana.

The record contains considerable evidence on interest rates and other related economic factors, their trend and the relative financial stability and favorable position of public utilities as compared with most other business enterprises. Since 1934 there has been a decline in interest rates and yields to the point where they are now probably lower than they have ever been for high grade public utility securities. As an example, in 1939, Edison sold at a premium $114,500,000 principal amount, first mortgage bonds bearing a coupon rate of 3¼ per cent.

As a well-established public utility, wholly owned by Edison, and whose costs are guaranteed by Edison and NIPSCO, respondent is in a particularly favorable financial position. It is in a position to finance its requirements for new construction or operations, either publicly or through its parent company, at extremely low interest rates.

Evidence introduced by a witness for respondent indicates that for the period 1935–39 Edison earned an overall average return of 5.32 per cent on its claimed invested capital. During this same period Edison did approximately $375,000,000 of financing at low interest rates.

Since the conclusion of the hearings in this case in October, 1940, we take note of the swiftly moving events both here and abroad. However, notice is also taken of the fact that there has been no such change in interest rates and yields as would require a conclusion any different from that which follows from the evidence of record.

After carefully considering all the evidence of record, it is concluded that a 5½ per cent rate of return is fair and reasonable on the rate base allowed.

Rate Reduction

For the twelve months ended June 30, 1940, the income available for return of respondent, per books, was $2,656,325.65. Respondent has proposed certain adjustments to revenues and expenses to reflect actual prevailing conditions resulting in an income of $2,503,814.33. With one excep-

tion these adjustments are accepted as proper.

Respondent has increased its recorded annual allowance for depreciation $111,061.46, to provide for depreciating the claimed deferred investment in Unit No. 2. This claim, for the reasons stated herein, has been denied. Accordingly, this added depreciation charge is also disallowed.

[20] In addition to the adjustments made, respondent has estimated, but not included, an increase in taxes of $45,600 as excess profits tax. We include this amount as a proper additional item of expense.

The resulting income available for return and considered as proper is $2,569,276. Applying the same method of allocating expenses used by respondent in billing Edison and NIPSCO, $2,003,112 of the above income is found as derived from sales to Edison.

The following tabulation shows the basis for arriving at the amount by which the present return exceeds a reasonable one for the respondent's total operations and the amount applicable to sales to Edison:

	Total Company	For Service to Edison
Gross Investment ..	$41,232,882	$32,298,919
Less: Accrued Depreciation	8,383,745	6,567,232
Prudent Investment .	$32,849,137	$25,731,687
Plus Working Capital	1,506,332	1,198,018
Rate Base	$34,355,469	$26,929,705
Rate of Return	5½%	5½%
Reasonable Return—5½% of Rate Base	$1,889,551	$1,481,134
Income Available for Return	$2,569,276	$2,003,112
Less: Reasonable Return	1,889,551	1,481,134
Excess Income	$679,725	$521,978

The above tabulation shows that the present return earned by respondent is excessive by $521,978 for service to Edison.[13] A reduction of this amount in income would result in certain savings in income taxes. Accordingly, the present rates and charges are excessive and should be reduced by this amount, plus the concomitant savings in taxes. An appropriate order will be entered to effect that result.

Order

Upon consideration of the orders previously issued in this proceeding, the evidence of record, the briefs filed, and the Commission having on this date issued Opinion No. 63, which is hereby incorporated by reference and made a part hereof;

The Commission finds that:

(1) Chicago District Electric Generating Corporation (hereinafter referred to as respondent), an Indiana corporation, owns and operates facilities located in the state of Indiana for the generating and transmission of electric energy (including facilities for the transmission of electric energy from its said plant to the state of Illinois), and sells at wholesale electric energy to Commonwealth Edison Company (hereinafter referred to as Edison) and to Northern Indiana Public Service Company (hereinafter referred to as NIPSCO);

(2) Respondent is engaged in the business of transmitting and selling at wholesale electric energy in interstate commerce within the meaning of

[13] By the same token it appears that the earnings of respondent on the energy sold to NIPSCO are excessive by approximately $158,000. However, this matter lies within the province of the Indiana Commission.

§ 201 of the Federal Power Act; it transmits and sells at wholesale in interstate commerce to Edison for resale to consumers in the city of Chicago, Illinois, under present arrangements, approximately 80 per cent of the electric energy which it generates;

(3) The facilities for such transmission and sale at wholesale of electric energy to Edison, and the rates and charges made, demanded, and received by respondent for or in connection with the transmission and sale of electric energy to Edison, and all rules and regulations affecting or pertaining to such rates or charges are subject to the jurisdiction of the Commission;

(4) The transmission of electric energy by respondent to NIPSCO does not constitute the transmission of electric energy in interstate commerce under § 201 of the Federal Power Act;

(5) The actual legitimate cost before depreciation within the meaning of § 208 of the Federal Power Act of respondent's entire electric plant used and useful as of June 30, 1940, is $41,232,882, of which $39,125,324 represents generating equipment and $2,107,558 represents transmission facilities; of the total energy generated by respondent 272/342 is sold to Edison, 70/342 to NIPSCO; it is proper and reasonable to apportion generating facilities on such kilowatt basis; therefore, the actual legitimate cost before depreciation of respondent's generating facilities devoted to supplying electric energy to Edison is 272/342 of $39,125,324, or $31,117,217; transmission facilities used respectively to supply electric energy to Edison and NIPSCO are allocated directly and properly on respondent's books and $1,181,702 shown on respondent's books correctly represents the actual legitimate cost before depreciation of transmission facilities used in supplying Edison, which makes the total actual legitimate cost before depreciation of facilities used in supplying Edison $32,298,919;

(6) The figure, $8,383,745, being respondent's total accumulated depreciation reserve as of June 30, 1940 (after correction of an erroneous charge of $115,949) correctly measures, for the purpose of this proceeding, the accrued depreciation existing in respondent's property as of June 30, 1940; it is proper and reasonable to allocate depreciation in the proportion which respondent's facilities used to supply Edison bear to its facilities used for NIPSCO; therefore, $6,567,232 is the proper proportion of the total accumulated depreciation reserve to be deducted from $32,298,919 to obtain $25,731,687, which is the depreciated actual legitimate cost of respondent's property used in supplying electric energy to Edison;

(7) A total allowance of $1,506,332 for working capital is sufficient and reasonable; it is proper and reasonable to apportion working capital on the kilowatt basis established in Finding (5) above; therefore, $1,198,018 is a sufficient and reasonable allowance for working capital in connection with supplying electric energy to Edison; $1,198,018 added to $25,731,687 makes $26,929,705 which represents respondent's prudent investment (depreciated actual legitimate cost) plus working capital in facilities used to supply electric energy to Edison;

(8) The sum of $26,929,705 is the proper rate base in this case upon which respondent is entitled to earn a fair rate of return for supplying electric energy to Edison;

(9) An annual rate of return to respondent from sales of electric energy to Edison of 5½ per cent on the rate base of $26,929,705, which would amount to an annual net operating income of $1,481,134, is fair and reasonable;

(10) Respondent's net operating income for the twelve-months' period ending June 30, 1940, was $2,569,276, of which $2,003,112 was respondent's net operating income from sales to Edison;

(11) Therefore, the rates and charges made, demanded, and received by respondent for and in connection with the transmission and sale at wholesale of electric energy to Edison in interstate commerce are unjust and unreasonable and are excessive as of June 30, 1940, by the amount which $2,003,112 exceeds $1,481,134, or $521,978 plus the income and other taxes applicable to that amount;

(12) The rates and charges made, demanded, and received by respondent for supplying electric energy to Edison as hereinafter fixed and determined will be just and reasonable;

Therefore, the Commission *orders* that:

(A) Respondent, Chicago District Electric Generating Corporation, shall on or before August 15, 1941, revise its rates and charges as set forth in Rate Schedule FPC No. 6 and file with the Commission such revised schedule so that it will provide a net operating income to respondent from charges to Edison equal to a 5½ per cent return on the rate base of $26,929,705, apportioned as of June 30, 1940, to property used in supplying electric energy to Edison, adjusted, however, to July 1, 1941, and semi-annually thereafter for the cost of additions to such property and betterments thereof and for change in depreciation reserve, which adjustments shall be computed in accordance with the principles enunciated and formulae established in the Commission's Opinion No. 63 adopted herein; and such revised schedule shall be effective as to all electric energy sold to Edison on and after July 1, 1941;

(B) Respondent shall cease and desist from demanding of, charging to, and collecting from Edison any rate or charge for electric energy supplied to Edison on or after July 1, 1941, other than the new rates and charges herein authorized to be made and collected pursuant to (A) above.

MARYLAND CIRCUIT COURT NO. 2 OF BALTIMORE CITY

Sun Cab Company, Incorporated

v.

Stuart Purcell et al. Constituting the Public Service Commission of Maryland

Service, § 78 — Powers of Commission — Taxicab cruising.

1. The Commission, under its statutory power to make rules and regulations to govern the control and operation of taxicabs, may, in the absence of arbitrariness or unreasonableness, prohibit cruising by taxicabs in and near a large city, p. 284.

Constitutional law, § 17 — Vested rights — Taxicab operations.

2. The owner or operator of taxicabs has no vested right to operate a taxicab where the privilege so to do is granted only for annual periods, expiring at the end of each calendar year, p. 284.

Constitutional law, § 15 — Vested rights — Earlier opinions of Commission.

3. Owners and operators of taxicabs can claim no vested rights under earlier opinions of the Commission as such opinions cannot confer upon them interests which cannot be disturbed or impaired by a change in the views of the Commission, p. 285.

Motor carriers, § 6 — Constitutional limitations — Statutory prohibition of "nut" or "minimum booking" system — Compensation of taxicab operators.

4. Section 304 of Art. 23 of the Code (1939), making unlawful the so-called "nut" or "minimum booking" system of compensating taxicab operators, is a constitutional exercise of legislative power; and a regulation of the Commission in substantial accord with the terms of the statute is reasonable and valid, p. 285.

Motor carriers, § 29 — Taxicab regulation by Commission — Payment of operators.

5. A requirement by Commission regulations that taxicab operators be paid by wages or a percentage of gross receipts and that the owner pay all operating expenses and charge to the service gasoline at cost is reasonable and valid, p. 285.

Motor carriers, § 30 — Taxicab regulation by Commission — Hours of service.

6. A requirement by regulations of the Commission that no taxicab driver work continuously for more than twelve hours is reasonable and valid, p. 285.

Service, § 423 — Taxicab operation — Operating units.

7. A rule of the Commission requiring taxicabs to be operated as units of an effective operating group, unless expressly exempted by the Commission, is reasonable and valid, although it may conceivably work injuries in particular cases; until such cases arise and the Commission has acted

upon them the court will not anticipate unjust or unreasonable action by the Commission, p. 287.

[July 23, 1941.]

ACTION *to restrain operation of Commission order regulating taxicabs; demurrer to bill of complaint sustained with leave to amend. For decision of Commission, see 39 PUR(NS) 502.*

FRANK and ADAMS, JJ.: The relief sought in this cause is that the proceedings leading to the order of April 22, 1941, of the Public Service Commission be decreed to be null and void; that certain provisions and rules in said order be decreed to be unreasonable and null and void; and that an injunction, preliminary and perpetual, be granted restraining the execution and operation of said order.

By Art. 23, § 362 of the Code, the Public Service Commission is "empowered and authorized to make such rules and regulations as it may deem necessary to govern the control and operation of taxicabs," and the aforesaid order of April 22, 1941, purported to be a comprehensive revision and amendment of the general rules governing the operation of taxicabs in and near Baltimore city.

As appears from the bill of complaint and supporting exhibits, the proceedings before the Public Service Commission culminating in the order of April 22, 1941, were entitled: "In the matter of the investigation of the service, affairs, practices and methods of operation of taxicab owners operating in Baltimore city," and after due notice to all parties in interest by order of February 24, 1941, hearings were commenced on March 3, 1941. Changes in existing rules and regulations were proposed by the Commission's chief engineer, and the hearing continued until March 13, 1941, when at the request of the taxicab owners and operators, an adjournment was had until March 21, 1941. On the latter date, the hearing was resumed, and certain recommendations were submitted by owners and operators.

The order of April 22, 1941, of the Commission recites that the order of February 24, 1941, initiating the investigation, followed complaints that the taxicab service furnished in Baltimore city was not satisfactory or dependable. The opinion and order of April 22, 1941, were apparently based upon the finding by the Commission that there was a general lack of supervision and direction of the service by the taxicab owners, and a lack of control and direction of the drivers which made dependable response to telephone calls for service impossible; that daily records or manifests were not being properly kept; that 70 per cent of the cabs were being operated upon the "Minimum Booking" system of compensation of the driver, which system, as actually applied, the Commission found to be illegal as in violation of Art. 23, § 364 of the Code; that dependable response to telephone calls for cabs is an essential feature of satisfactory taxicab service and that an adequate number of well-distributed stands with telephone facilities and the effective use

thereof is necessary for satisfactory service.

It thus appears that the order of April 22, 1941, was passed after an extended hearing of which all parties in interest had due notice, and at which they were accorded full opportunity for presentation of evidence and argument. That there was public complaint about the lack of taxicab service in response to telephone calls, and failure to keep proper manifests or daily reports seems to have been conceded.

We find in the bill of complaint no statement of facts bearing upon the question of the reasonableness of the regulations under attack.

As to the prohibition of cruising the recital amounts simply to a statement that it had long been permitted and that the complainant's businesses were conducted with cruising as a large and important part thereof, and that the complainants thereby acquired a vested right so to conduct their businesses. As to the so-called "minimum booking system," it is alleged that it was adopted in pursuance of the constitutional right of employer and employee to establish such terms of employment as to them shall seem proper, and the prohibition of this system is an unconstitutional invasion of the right of freedom of contract. Here again no allegations of fact are made that tend to bear upon the question of the unreasonableness of the Commission's prohibition.

The contentions of complainants thus resolve themselves into questions of law and the conclusions of law drawn in the bill are, of course, not admitted by the demurrer.

[1, 2] 1. As to the prohibition of cruising. This prohibition does not now apply to the central and more congested portions of the city. It does not now affect the area bounded by Paca street, Madison street, Fallsway and Lombard street. It does relate to the rest of Baltimore city and therein cruising is forbidden.

"9. *Cruising.* Each taxicab shall be operated over the direct route between the point of delivery of a passenger and the nearest available telephone call box or stand, and from there to the next nearest stand or call box, etc., unless expressly directed by the official whose duty it is to dispatch the cabs and direct the service. Operation over other routes is defined as cruising, and is prohibited. This rule does not prohibit the pickup of passengers en route."

The evil sought to be remedied by this rule was the irresponsibility and substantial freedom from all control of the operators. Cruising permits the operator almost untrammeled control of the owner's taxicab from the moment of its leaving the garage until its return thereto twelve hours later. No such thing as orderly management of one or a fleet of taxicabs is possible under such a complete lack of system. It renders impossible provision for a regulated and efficient management of the taxicab as a means of transportation. Each operator is free to act independently and released from all coördination with or integration in transportation by taxicab. Regulation or even prohibition of cruising may be requisite. That is undertaken by the rule in question.

The unique service performed by the taxicab system in the field of public transportation is to be found in the

fact that each carriage of passengers is a matter of special contract and provides service on call. In this service, both termini, as well as the route to be followed, are matters subject to the passenger's reasonable directions. No other carrier can perform such service on call, and it is important that the taxicab service be so regulated that it discharges its true functions in the whole transportation field, into which, in the public interest, it must be properly integrated.

It is apparent that reasonable regulation is essential and within the powers of the Commission. There is no allegation of fact in the bill of complaint that even tends to show that the provisions of the rule are unreasonable. All regulations of cruising are stigmatized as an unconstitutional interference with a vested right to cruise. This claim takes no note of the factual situation that there is no vested right to operate a taxicab, but that the privilege so to do is granted only for annual periods, expiring at the end of each calendar year.

[3] 2. For the reason just given, complainants can claim no vested rights under earlier opinions of the Commission. These they construe as conferring upon them interests which cannot be disturbed or impaired by a change in the views of the Commission. It is too plain for comment that so to hold would hamstring the efforts of the Commission to recognize changes in conditions, to obtain the benefits of improved methods and devices, and would freeze the whole system of taxicab transportation in a mould soon to become obsolete and useless.

[4–6] 3. The so-called "minimum booking system" seems to us to be in substance and essence the system of employment by owners and operators forbidden by the provisions of § 364 of Art. 23 of the Code (1939). "On and after January 1, 1932, no taxicab, for which such permit shall have been issued (by the Public Service Commission) shall be operated, except by the owner or an employee of the owner, and it shall be unlawful for any owner of any such taxicab to enter into any contract, agreement, arrangement or understanding, expressed or implied, with an operator thereof, by the terms of which such operator pays to, or for the account of, such owner a fixed or determinable sum for the use of such taxicab, and is entitled to all or a portion of the proceeds arising from its operation." A regulation of the Commission, carrying into effect this legislative enactment, can be invalid only if the enactment itself is unconstitutional and void, or the regulation is inconsistent with or repugnant to the enactment itself.

We see no ground for holding the enactment unconstitutional. There is no such thing under the Federal and state Constitutions as an absolute right of freedom of contract. "There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision the wide department of activity, which consists of the making of contracts, or deny to government the power to provide safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community." Chicago, B. & Q. R. Co. v. McGuire (1911) 219

US 549, 567, 55 L ed 328, 337, 31 S Ct 259. Cited and followed in West Coast Hotel Co. v. Parrish (1937) 300 US 379, 392, 81 L ed 703, 708, 57 S Ct 578, 108 ALR 1330, 1334.

The taxicab business is, of course, one charged with a public interest, just as in the case of other public utilities. Peculiarly, however, it is one in which the compensation of the employees involves questions closely related to the public interest, and this to a degree not involved in the case of employees of other public utilities. The compensation of taxicab drivers must have an immediate relation to the amount of their receipts. Each driver must earn enough to pay the operating expenses of the cab and his own compensation, and that independent of the results achieved by the other cabs in the same fleet. The validity of the statute here is amply supported by the decisions of the Supreme Court upholding the constitutionality of the Fair Labor Standards Act of June 15, 1938. United States v. F. W. Darby Lumber Co. (1941) 312 US 100, 85 L ed 395, 406, 61 S Ct 451; Opp Cotton Mills v. Administrator (1941) 312 US 126, 85 L ed 407, 420, 61 S Ct 524.

In these late cases opinions for the unanimous court were rendered by Mr. Justice Stone. It is held that the fixing of a minimum wage and maximum hours is within the legislative power and not a denial of due process under both the Fifth and Fourteenth Amendments to the Federal Constitution. West Coast Hotel Co. v. Parrish, *supra,* 300 US at p. 392, upholds the power of the state to establish minimum rates of wages.

We have no difficulty in holding Art. 23, § 364, constitutional and valid.

The first two sentences of Rule 33, promulgated by the Commission are in almost the exact language of the statute, and in complete accord with it. The remaining three sentences read as follows: "Compensation of drivers shall be by wages or a percentage of gross receipts. The taxicab owner shall pay all operating expenses, including the cost of gasoline, which shall be charged to the service at actual cost. The owner of a taxicab shall not permit the taxicab to be continuously in the custody of the same driver for a period of more than twelve hours."

These provisions seem so fundamentally reasonable and sane as to defy criticism. How else should operators be paid than by wages or a percentage of receipts. The rule does not fix the amount of compensation to be paid to the operator. It is true that the rule does not in its literal application permit a contract which would entitle the operator to all of the income from his cab after payment to the owner of a fixed sum (which the "minimum booking system" of compensation may do); but with this exception the rule would seem to permit any method of compensation that the parties may agree upon. The requirement of a cost charge for gasoline, not against the operator, but against the service, is in no sense a requirement that the owner sell gasoline at cost and is an admirable bookkeeping method, clearly within the authority of the Commission for use in fixing rates and for other purposes. No valid strictures of the prohibition of

working operators more than twelve hours in twenty-four hours can be advanced.

[7] 4. Rule 7, entitled "Operating Associations," is next attacked. "Every taxicab shall be operated as a unit of an effective operating group of sufficient number, and equipped with sufficient telephone and stand facilities for rendering satisfactory city-wide service, unless expressly exempted by the Commission. This requires that owners of small fleets or single taxicabs shall operate as members of a satisfactory operating association, and such association must be equipped with adequate stands and telephone call boxes so as to serve all parts of the city, and to make possible the effective direction and supervision of the service."

That this rule is in the interest of efficient service to the public can clearly not be gainsaid. That it may work hardship to particular owners and their operators, may also be admitted. It is perfectly conceivable that considerations of personal unpopularity or racial or other prejudice, may render it impossible for certain individuals to be associated with any group, so as to comply with the requirements of this rule. The original complainant herein operates 212 taxicabs under that number of permits. It would, most likely, of itself, constitute an effective operating group within the meaning of the rule. If the Commission hereafter fails or refuses to recognize it as such, after application for exemption from the operation of the rule be denied, it will be time enough to invoke the aid of the court. The same consideration applies to the individuals made parties plaintiff herein.

5. We are of the opinion that the charges made against the people's counsel, though admitted by the demurrer, do not affect the validity or propriety of the Commission's action. The same conclusion is reached as to the charges of favoritism by the Commission in its treatment of the Diamond Cab Company.

The demurrer to the bill of complaint will be sustained, with leave to amend in thirty days.

OHIO PUBLIC UTILITIES COMMISSION

Ashtabula Water Works Company

v.

City of Ashtabula

[No. 11186.]

Rates, § 57 — Jurisdiction of Commission — Review of ordinance rate — Franchise as a bar.

An ordinance granting a franchise to a water company and also granting a municipality the right to refix the reasonable maximum rates to be charged

by the company, after a specified period, did not deprive the Commission of jurisdiction to hear the water company's appeal from a subsequent ordinance regulating rates.

[May 21, 1941.]

MOTION *to dismiss appeal by water company from ordinance regulating water rate; motion overruled.*

By the COMMISSION: This day after full hearing this matter came on for consideration upon the motion of the city of Ashtabula, Ohio, to dismiss this appeal by the Ashtabula Water Works Company from Ordinance No. 2935 regulating the price to be charged for water in the city of Ashtabula from the 6th day of December, 1939, to the 5th day of December, 1944, for the reason and upon the ground that:

This Commission does not have jurisdiction of this matter inasmuch as under and by virtue of the terms of a 20-year franchise granted by Ordinance No. 2420 of the city of Ashtabula passed September 24, 1934, and accepted by the Ashtabula Water Works Company on October 22, 1934, the council of the city of Ashtabula was granted the right at the expiration of five years from the effective date of that ordinance, if the city had not purchased, leased, or appropriated the waterworks specifically described in said ordinance, to refix the reasonable maximum rates that should not be exceeded by the Ashtabula Water Works Company in its charge for water which it should furnish to the city of Ashtabula for public purposes and to the inhabitants of said city for domestic and manufacturing purposes;

Pursuant to the terms of said ordinance granting council of the city of Ashtabula the right to refix the reasonable maximum rates to be charged by the waterworks company, said council did, on the 6th day of November, 1939, adopt the ordinance herein appealed from by the Ashtabula Water Works Company fixing reasonable rates to be charged by the waterworks company as was authorized and agreed to by the Ashtabula Water Works Company by its acceptance of Ordinance No. 2420;

By virtue of the terms of said Ordinance No. 2420 and the acceptance thereof by the Ashtabula Water Works Company, said company is precluded from appealing from the rates fixed by Ordinance No. 2935, passed by the council of the city of Ashtabula, Ohio, on the 6th day of November, 1939; and upon the argument, written or oral, of counsel.

The Commission, being fully advised in the premises, finds:

That said motion is not well made and should be and hereby is overruled for the reason that the appellant, the Ashtabula Water Works Company, is not empowered to contract away its statutory right to effect the appeal herein.

To which finding and order of the Commission overruling its said motion, the said city of Ashtabula, Ohio, then excepted, here now excepts, and its exceptions here are noted of record.

NEW YORK DEPARTMENT OF PUBLIC SERVICE, STATE DIVISION, PUBLIC SERVICE COMMISSION

Re New York Steam Corporation

[Case No. 10401.]

Rates, § 313 — Conjunctional billing — Common ownership or leaseholds — Intercommunicating buildings.

Conjunctional billing and intercommunicating-buildings riders should be approved as part of the rate schedules of a steam utility so as to permit combined billing for service to buildings under common ownership or under common leaseholds of public record, subject to provisions as to distance between buildings, buildings on opposite sides of a street, operations under one management, and connection of consumer's own steam distribution system approved by proper authorities, since this is advantageous to both the consumer and the company.

Rates, § 313 — Conjunctional billing — History and abuses.

Discussion by the New York Commission of the history of conjunctional billing and intercommunicating-buildings riders for electric, gas, and steam service, with a comparison of riders for the different utilities and a discussion of abuses connected with conjunctional billing, p. 293.

[June 10, 1941.]

PROCEEDING *on motion of Commission as to tariff revisions of a steam company relating to conjunctional billing and intercommunicating buildings; riders approved.*

APPEARANCES: Gay H. Brown, Counsel (by George E. McVay, Assistant Counsel), for the Public Service Commission; Whitman, Ransom, Coulson & Goetz (by Cameron F. McRae and Jacob H. Goetz), New York, Attorneys for New York Steam Corporation; W. C. Chanler, Corporation Counsel (by Harry Hertzoff, Assistant Corporation Counsel), New York, for the city of New York.

VAN NAMEE, Commissioner: Hearings in this proceeding were held on March 11, 1941, April 7 and 23, 1941, at the New York office of the Commission.

General Statement

The present rate schedules of the New York Steam Corporation which became effective March 1, 1941, were filed at the direction of the Commission as a result of a proceeding in Case 9953 (proceeding on motion of the Commission as to the rules, regulations, and practices of New York Steam Corporation in respect to the renting of private boiler plants and in respect to guarantee contracts pursuant to Rider A—P. S. C. # 2 Steam). On March 4, 1941, the Commission instituted this investigation, the order stating:

"1. That this Commission, without

answer or other formal pleading, enter upon a hearing concerning the propriety of the rates, charges, rules, and regulations stated in a schedule contained in said amendments to its tariff, viz.,

P. S. C. No. 3—Steam
Rule VII–C—Conjunctional billing, appearing on Original Leaves Nos. 11 and 12
Rule VII–D—Intercommercial buildings, appearing on Original Leaf No. 12.

The provisions of riders C and D are as follows:

Rider C—Conjunctional Billing

"It is further understood and agreed that when the group of buildings or parts of buildings enumerated hereon are under a common ownership of public record in the name of the consumer or are under a common leasehold of public record in the name of the consumer for not less than a 5-year term, the steam supplied to such buildings or parts of buildings will be totaled for the purpose of determining the amount of the bill which such consumer shall receive for service, provided:

"a. The buildings or parts of buildings are not more than 100 feet apart; or

"b. The buildings or parts of buildings, separated by a city street, are situated upon parcels of land which occupy wholly or in part immediately opposite street frontages on the same street; or

"c. The buildings or parts of buildings are situated upon the same parcel or contiguous parcels of land and are exclusively occupied and used by the consumer as a unitary enterprise at one location and under one management; or

"d. The buildings or parts of buildings are connected by the consumer's own steam distributing system which has been approved by the state, municipal, and insurance authorities having jurisdiction.

"Each consumer hereunder shall furnish to the company satisfactory proof that the buildings or parts of buildings in question conform to the above-stated conditions and to the other terms of the service classification to which this rider is being applied and that the use of steam service within such buildings or parts of buildings conforms in all respects to the regulations contained in the company's rate schedule. Upon any change in this relationship, or in such use, contrary to these conditions, the consumer agrees that he will forthwith notify the company thereof in writing and agrees that his application and its acceptance for the company shall become null and void."

Rider D—Intercommunicating Buildings

"It is further understood and agreed that when the group of buildings or parts of buildings enumerated hereon are under a common ownership of public record in the name of the consumer or are under a common leasehold of public record in the name of the consumer and are intercommunicating by means of at least one door or passageway permitting a person to pass from any one building to another and that the said buildings or parts of buildings are operated as a single property, the steam supplied to such buildings or parts of buildings will be totaled for the purpose of determining the amount of the bill which

such consumer shall receive for service.

"The consumer will, on request, furnish to the company satisfactory proof that the buildings or parts of buildings in question conform to the above-stated conditions and to the other terms of the service classification to which this rider is being applied, and that the use of steam service within such buildings or parts of buildings conforms in all respects to the regulations contained in the company's rate schedule. Upon any change in this relationship, or in such use, contrary to these conditions, the consumer agrees that he will forthwith notify the company thereof in writing and agrees that his application and its acceptance for the company shall become null and void."

It is apparent from the text of the respective riders that the conditions of eligibility embodied therein are directed to the physical or geographical relation of the premises involved and the unity and permanence of the consumer's property interest as evidenced by ownership, leasehold, etc.

The extent of conjunctional billing was testified to by Mr. Frank E. Pendleton, vice president of the steam corporation, who has been with the corporation or its predecessor in various official capacities since June, 1902. The steam corporation had on March 1, 1941, seventy-four consumers who were receiving conjunctional billing, including the Pennsylvania Railroad Company, to which service is supplied under a special contract filed with the Commission in accordance with Tariff Circular No. 102 as amended. The annual revenue from these consumers during the year 1940 approximated $2,209,000, or about 20 per cent of the total annual revenue of the steam corporation, and their total steam consumption approximated 2,591,000 thousand pounds. Excluding the Pennsylvania Railroad Company, the annual revenue approximated $1,823,000 and the consumption approximated 2,098,000 thousand pounds.

Compliance with Conditions of Eligibility

Although conjunctional billing had been applied prior to March 1, 1941, under conditions generally similar to those now embodied in the rate schedule, the steam corporation had not followed the practice of making periodic checks to determine the continuance of the conditions which, in the first instance, made the customer eligible for the application of riders C and D. The corporation made an extensive study of the geographical and physical conditions of each of the seventy-four consumers now under such riders and prepared and presented an atlas showing the location of each of the premises for which conjunctional billing is rendered.

Upon cross-examination of a number of specific cases by counsel for the Commission, nothing was developed which would indicate that the steam corporation was applying or proposed to apply conjunctional billing in any manner other than that provided in the rate schedule.

Each of the seventy-four conjunctional billing cases was also investigated from the standpoint of common ownership or leasehold. In the first instance, reference was made to the records maintained by Consolidated Edison Company with respect to own-

ership or leasing of premises in these cases. The facts thus disclosed indicated that twenty-eight of the seventy-four consumers in question were eligible for conjunctional billing of steam service in so far as common ownership or leasehold is concerned. Subsequently, in view of questions raised by counsel to the Commission as to the steam corporation's reliance upon the Consolidated Edison Company records, the eligibility of these twenty-eight consumers was substantiated by an independent check of the public records.

The ownership or leasehold of the remaining forty-six cases was likewise investigated by reference to public records.

As the eligibility of individual consumers for conjunctional billing in accordance with the provisions embodied in the revised rate schedule was ascertained, the appropriate rider was transmitted to the consumer for execution. At the close of the hearings, conjunctional billing of one consumer had been discontinued. Of the seventy-two remaining cases (excluding the Pennsylvania Railroad Company) the eligibility of fifty-one consumers for conjunctional billing was established, the eligibility of four additional consumers was virtually established, and the steam corporation was continuing its endeavors to have the remaining seventeen consumers establish their eligibility for the continuance of conjunctional billing in accordance with the provisions of the rate schedule.

Advantages of Conjunctional Billing

Mr. Pendleton explained the advantages of conjunctional billing to the consumer and to the company, respectively, which are summarized in the following portion of his testimony:

"The advantages of combined billing to the consumer are primarily a lesser cost for the steam supplied to two or more premises than would be the cost of the steam supplied if separately billed to each of the premises under the effective schedule for steam service. This is due to the fact that each of the effective service classifications, Nos. 1, 2, and 3, provides rates for the steam supplied which comprise what is generally termed block rates. Where two or more premises are separately billed the charges to consumers for steam supplied to each of the premises involved include the rate per thousand pounds for the initial block applicable to each of the individual premises served and also each succeeding block applicable to each of the premises served, as may appear, whereas under the provisions of rider C, conjunctional billing, the charge for the total steam supplied to the two or more premises comprises a rate for the initial block and a lesser rate for each succeeding block applicable to the total amount of steam used in all premises, enumerated in Rider C, with the result a lesser proportion of the total steam supplied is furnished within the initial and next succeeding block rates, and a larger proportion of the steam supplied is charged at the lower block rates.

"Another advantage is the larger quantity billed as a single charge under conjunctional billing may permit the application of service classification No. 2 instead of service classification No. 1, with the resultant savings to the consumer.

"The primary advantage of conjunctional billing to the company is it permits central station service to compete with isolated plant service to groups of buildings under common ownership or leasehold, which are favorably located for service from a single isolated plant."

Discussion

Since the conjunctional billing and intercommunicating buildings riders are very similar in wording to the corresponding riders in the gas and electric schedules of the Consolidated Edison Company, and since this practice has been carried on in all three fields, gas, electric, and steam, over a long period, the history of the practice in the gas and electric fields has been reviewed briefly to see if the introduction of these riders into the steam schedule will encourage or create any of the problems that arose in the gas and electric fields.

A conjunctional billing rider was included in the first electric rate schedule filed by the New York Edison Company on March 1, 1909, while the intercommunicating buildings rider was first introduced into the electric rate schedule in November, 1914. These riders are quoted below:

Conjunctional Service Rider

"It is further understood and agreed that in view of the fact that the buildings enumerated in this contract are not more than 100 feet apart, are under a common leasehold ownership, and may be served from one service the current required for them may be taken collectively in determining the rate to which the undersigned is entitled under this contract." (Re New York Edison Co. PSC 1 NY No. 1 page 25.)

Intercommunicating Buildings or Parts of Buildings

"It is further understood and agreed that when buildings or parts of buildings under a common ownership or leasehold are intercommunicating by means of door or passageways, permitting a person to pass from one to the other without going outside of either building, electric current consumed in each or in such intercommunicating parts as are under a common ownership or leasehold may be supplied jointly under a single contract." (Re New York Edison Co. PSC 1 NY No. 1.) (Effective April 23, 1913, Supplement No. 30.) (Filed November 12, 1914.)

A comparison of these riders with the riders in effect at present shows that the common ownership or leasehold requirements have been made more specific. In both existing riders the consumer is required to prove that the consumer's name and the owner's or leaseholder's name are the same. In the case of the conjunctional billing rider, and if the property is leased rather than owned, the consumer is required to prove in addition that there is a common leaseship of public record for not less than a 5-year term in order to prevent the rigging of leases for the mere purpose of compliance. However, if the buildings concerned are intercommunicating, this 5-year status is not required. These revisions of the original riders were made to eliminate, as far as possible, the undesirable conditions brought to the attention of the Commission as the result of gas and elec-

tric complaints received during the intervening 30-year period. In the case of the steam company, Mr. Pendleton's testimony indicates that a thorough check is made of the eligibility of each consumer with respect to these requirements, before executing either rider "C" or "D."

A further comparison of the original electrical rider with the existing electrical and steam conjunctive billing riders will show that in the existing riders there are four circumstances, with relation to the geographical or physical location of the buildings, under which the consumption of these buildings, may be conjunctively billed. The original electrical rider of the year 1909, however, had only one of these; namely, that the buildings are not more than 100 feet apart. It is interesting to note that in the case of the steam corporation, almost all of the seventy-four previously mentioned applications of conjunctional billing would be eligible under this same 100-foot provision. Mr. Pendleton testified that it would be necessary to resort to one of the three other alternate grounds for eligibility in only a few of the cases.

One of the first abuses connected with conjunctional billing in the electrical field as revealed by the Commission's investigations, was that the electric companies permitted the landlords to keep as profit the entire difference in billing resulting from the rate differential between the landlord's wholesale rate and the tenant's retail rate. The electric company, on the other hand, bore the entire cost of metering and billing the tenant's consumption. In order to overcome this objectionable feature, the Commission ordered the electric companies to meter and bill only the consumption of the consumer of record and to terminate its practice of metering and billing the consumers supplied by submeters. This, to some extent, led to the existence of the present-day submetering companies which have taken over the metering and billing formerly carried on by the electric companies. Chairman Maltbie anticipated in 1914 some of the difficulties encountered in present-day electric submetering practice as is evidenced by the following quotation from his memorandum dated March 10, 1915, in Cases Nos. 1395 and 1492, PUR1915B 685, 775.

"It should be pointed out further that the adoption of an 8-cent maximum without any meter charge fails to reach the problem of discrimination under the landlord and tenant contracts. The effect would be to reduce somewhat the profit of the landlords and to prevent the landlords of small buildings from reaping any profit, but the large landlords would still make a profit. The expedient suggested, namely, that the landlord be required to provide his own meters and that the Edison Company be prohibited from providing more than one meter, is highly unsatisfactory. It will give the tenant no redress in case he complains about the accuracy of a meter. Under present conditions, the meters belong to the Edison Company and are subject to the supervision of the Public Service Commission. If the service is unsatisfactory, the tenant may appeal to the Commission. But the landlords will be beyond the pale of regulation, and the Commission will be powerless to aid the tenants. Further, the limitation of one meter

per consumer will fall harshly upon many who wish separate meters to register consumption on separate circuits or for distinct uses. If a consumer wants several meters, he ought to be allowed to have them, *provided he pays accordingly.* This he would be required to do if a schedule of meter charges were established."

The Commission in its annual reports for a number of years has advocated the extension of its regulatory powers to cover submetering, but to date the legislature has not seen fit to follow the suggestion.

At the present time the steam company does supply, service and maintain submeters for its consumers in some cases, but it does so at an annual rental fixed in the rate schedule and thereby eliminates the objectionable features of the electric company's former submetering practices of rendering this service free of charge to landlords. The fact that the steam meter requires a great deal of servicing and that the computations necessary to determine the consumption are quite complex, have been factors which have led the steam company to offer this steam meter leasing service to its consumers.

A comparison of the wording of the conjunctional billing and intercommunicating buildings riders "C" and "D" with the corresponding riders in the gas and electric schedules of the Consolidated Edison Company shows that the wording of all three versions are very similar, with the electric and the steam schedule riders being especially similar. The difference in this case consists chiefly of the substitution of the word "steam" for the word "electric" and of the omission of the provisions found in the electric schedule relating to the consumer's demand. However, a comparison of the gas and steam schedule riders shows that the eligibility requirements necessary for the application of combined billing are considerably more stringent in the gas field. For example, in order to be eligible for either the conjunctional billing or intercommunicating buildings rider, the gas consumer must not submeter and sell gas to another consumer. In addition, the provision found in both the steam and electric conjunctional billing riders in which the consumptions of buildings within 100 feet of each other may be combined for billing purposes, is not found in the gas schedule rider. Apparently because of the absence of competition from private gas generating plants and because of the specific provisions of the rate schedule prohibiting the submetering of gas to other consumers, the practice of conjunctional billing has been carried on in the gas field over a long period of years without any serious problem arising. The steam and electric companies, on the other hand, have competition from private generating plants and apparently have been forced to liberalize the terms of the riders to permit submetering in order to meet this competition.

The steam company has estimated its revenue from the possible seventy-four conjunctional billing customers to be $2,209,000 per year. Although the billing of these seventy-four customers would probably be appreciably greater if calculated on a nonconjunctive basis, the abolition of conjunctional billing would probably not increase the company's revenue to that

extent, since some of these consumers might be lost to private steam generating plants by such action. It should be noted that the electric companies have made several attempts to limit this practice, but there were so many protests upon each attempt, that none of these limitations went into effect. Many of these consumers seemingly have been enjoying this privilege so long that they consider it in the nature of a vested right.

Conclusion

The results of this investigation can be summarized as follows:

It appears that the introduction of the conjunctional billing and intercommunicating riders into the New York Steam Corporation's rate schedule is merely an assurance that all eligible customers will have the opportunity to avail themselves of a privilege that has existed in all three fields, gas, electric, and steam for a long period of time. It also appears that this practice is advantageous to both the consumer and the company.

By using the wording of the corresponding riders in the electric schedules, the steam company is taking advantage of many well-considered revisions of those riders of the electric rate schedule.

The testimony of the company's witness indicates that the company is thoroughly investigating the eligibility of each applicant for these riders.

Under these circumstances, it is believed that the conjunctional billing and intercommunicating buildings riders found on Leaves 11 and 12 of P.S.C. No. 3, Steam, of the New York Steam Corporation, should be permitted to remain in effect.

It is, however, recommended that the New York Steam Corporation institute the practice of checking annually the eligibility of the consumer to which the riders have been applied; somewhat in the manner followed by the Consolidated Edison Company in the case of customers with the corresponding electrical riders.

An order closing these proceedings is attached. [Order omitted.]

COLORADO PUBLIC UTILITIES COMMISSION

Lulu A. Daniels et al.

v.

City of Golden

[Case No. 4860, Decision No. 17291.]

Service, § 48 — Jurisdiction of Commission — Enforcement of contract — Municipal plant extension.

1. The Commission has no jurisdiction to require specific performance of a contract between a municipality and one who has granted a right of way for pipe lines under an agreement that the city shall furnish water service to the grantor, p. 297.

DANIELS v. GOLDEN

Municipal plants, § 11 — Jurisdiction of Commission — Extraterritorial service.

2. The Commission has no jurisdiction to order a city to furnish water service outside of municipal boundaries unless it is shown that the city is engaged in extraterritorial operation in its proprietary as distinguished from its governmental function, p. 297.

[June 20, 1941.]

PETITION *for order requiring a municipal plant to furnish extraterritorial water service; motion to dismiss granted.*

APPEARANCES: Joseph P. Constantine, Denver, Attorney, for petitioners; James J. Patterson and J. E. McCall, Golden, Attorneys, for respondent.

By the COMMISSION: A petition was filed alleging ownership of certain property by petitioners in the Lookout mountain district, Jefferson county, Colorado, and further alleging the execution of a certain contract in June, 1903, between the city of Golden and petitioners' grantors in reference to the furnishing of water to said grantors by said city for domestic purposes upon said premises in consideration of granting rights of way for pipe lines.

It is further alleged that petitioners had been been unable to secure any water from city of Golden and that discrimination exists because others had been granted water service under the same kind of a contract, and that a municipal corporation may not legally show any partiality among those applying for water service.

The prayer of the petition requests an order of the Commission directing the city of Golden to grant the request of petitioners.

To said petition, a motion to dismiss was filed by the city of Golden on the ground that the Commission has no jurisdiction because specific performance of a contract is sought, which is a judicial function. Said motion to dismiss was argued orally before the Commission.

Chapter 137, § 38 of Vol. 4, Colo. Stats. Anno. provides that our hearings shall be informal and that we shall not be bound by the technical rules of evidence, and this Commission is also authorized to remove undue and unjust discriminations in the rules, regulations, practices, and contracts of public utilities affecting rates, fares, tolls, rentals, charges, and classifications. See Chap. 127, § 24, Vol. 4, Colo. Stats. Anno. However, even though our proceedings are more or less informal, and we are not bound by the technical rules of evidence, yet we must be able to determine from the petition that we do have jurisdiction of the subject matter involved.

[1, 2] An examination of this petition discloses that either the petitioner is relying upon an order of the Commission requiring specific performance of a contract, or is relying upon his allegation of discrimination. The first proposition is clearly a judicial function and beyond the authority of a regulatory body. The second proposition can only be considered provided we may determine from the pleading that the city of Golden is operating as a public utility outside of its corporate

limits. To bring the city of Golden in its extraterritorial operations under our jurisdiction, we must also find that said operations are in its proprietary, as distinguished from its governmental, functions.

Petition affirmatively shows that any rights of petitioners are based upon contract. We know not what defenses may exist on the part of city of Golden against the performance on its part of the terms of said contract. We could not pass upon same in any event. No question of rates or service is involved in the instant hearing because no service is being rendered. Apparently, the city of Golden entered into certain contracts with various individuals wherein it agreed to furnish water for domestic use in consideration of the granting of certain rights of way.

In Re Denver (1937) Case No. 1994, Decision No. 10497, 20 PUR (NS) 235, the Commission held that a municipality furnishing water service outside of municipal limits, not as a public utilty but as a nonutlity service under a leasing arrangement, was only subject to our jurisdiction whenever said service came in competition with a utility.

After a careful consideration of the motion to dismiss, the Commission is of the opinion, and so finds, that it is unable to determine from the petition filed that the Commission has any jurisdiction over the subject matter, and that said motion to dismiss should be granted.

ORDER

It is therefore *ordered,* that said motion to dismiss be, and the same is hereby, granted without prejudice to the rights of petitioners to file an amended petition if they so elect.

SECURITIES AND EXCHANGE COMMISSION

Re Massachusetts Mutual Life Insurance Company

[File No. 31-510, Release No. 2852.]

Intercorporate relations, § 19.25 — Holding company regulation — Exemption — Temporary holding company.

A life insurance company which, by an exchange of defaulted bonds for stock, has become the owner of more than 10 per cent of the voting securities of a public utility holding company which is exempt from registration by virtue of SEC Rule U-2 because of the bankruptcy of a company, is a holding company solely by reason of the acquisition of securities for the purposes of liquidation or distribution in connection with a bona fide debt previously contracted within the meaning of that language in § 3 (a) (4) of the Holding Company Act; and upon a showing that it did not become a holding company within the meannig of the definition in § 2 (a) (7) until recently, it is entitled to an exemption as a temporary holding company

within the purpose and intent of § 3 (a) (4) for a limited period required for disposition of its holdings.

[June 27, 1941.]

APPLICATION *by a life insurance company for exemption under § 3(a) (4) of the Holding Company Act; exemption granted.*

APPEARANCE: E. M. Calkin, for the Public Utilities Division of the Commission.

By the COMMISSION: On May 8, 1941, Massachusetts Mutual Life Insurance Company, a life insurance company organized under the laws of the commonwealth of Massachusetts, filed an application for an exemption under § 3(a) (4) of the Public Utility Holding Company Act of 1935, 15 USCA § 79c. The applicant owns more than 10 per cent of the voting securities of Indiana Gas & Chemical Corporation, a public utility holding company.

After appropriate notice, a public hearing was held on the application on June 18, 1941. Having examined the record, the Commission makes the following findings:

Indiana Gas & Chemical Corporation is an Indiana corporation engaged in the business of operating a by-product coke and gas plant at Terre Haute, Indiana, for the manufacture and sale of coke, gas, tar, ammonia, and light oils derived from the carbonization and distillation of coal. Until a few months ago this company sold to Indiana Gas Utilities Company[1] all of the gas which the latter used for distribution in its "Terre Haute division" comprised of the towns of Terre Haute, Brazil, and Clinton, Indiana. About April 1, 1941, Terre Haute Gas Corporation, a subsidiary of Indiana Gas & Chemical Corporation organized under the laws of Indiana, purchased[2] from Indiana Gas Utilities Company the physical assets of its Terre Haute division for a consideration of $1,250,000 cash (with minor adjustments). Since such acquisition Terre Haute Gas Corporation has been operating the gas distribution systems in the aforementioned towns. Indiana Gas & Chemical Corporation has no other public utility subsidiaries and has filed a statement on Form U–3A–2 claiming exemption under Rule U–2[3] from the provisions of the act.[4]

Applicant, Massachusetts Mutual Life Insurance Company, is presently the owner of voting securities repre-

[1] A subsidiary of Central U. S. Utilities Company, a registered holding company in the Associated Gas and Electric Company system.

[2] A declaration respecting such sale was approved by this Commission on March 21, 1941. See Central U. S. Utilities Co., Holding Company Act Release No. 2630, March 18, 1941.

[3] Rule U–2 provides—"Exemption of holding companies which are intrastate or predominantly operating companies."

(a) General Provisions. Any holding company, and every subsidiary company thereof as such, shall, subject to the filing of an exemption statement on Form U–3A–2 on or before March 1st of each year, and subject to the provisions of Rule U–6, be exempt from all the provisions of the act and rules thereunder, except § 9 (a) (2) of the act, if—

(1) such holding company, and every subsidiary company thereof which is a public utility company from which such holding company derives, directly or indirectly, any material part of its income are predominantly intrastate in character and carry on their busi-

senting 16.9 per cent of the voting power[5] of Indiana Gas & Chemical Corporation; such voting securities being 4,500 shares of $3 preferred stock constituting 19.1 per cent of the total thereof outstanding and 22,500 shares of the common stock constituting 13.4 per cent of the total thereof outstanding.[6]

Applicant's present interest in the voting securities of Indiana Gas & Chemical Corporation results from its purchase of $450,000 principal amount of the bonds of Indiana Consumers Gas and By-Products Company at various times during the years 1926 to 1928, inclusive. Thereafter the last mentioned company was declared a bankrupt; in 1935 it was reorganized as Indiana Gas & Chemical Corporation and applicant received 2,250 shares of $6 preferred stock and an equal number of shares of common stock of the new company in exchange for the bonds of the old company. In 1937 Indiana Gas & Chemical Corporation issued two shares of new $3 preferred stock for each share of old $6 preferred and 10 shares of new common stock for each share of old common; this exchange resulted in applicant becoming the owner of the voting securities of that company which it now owns.

On the foregoing facts we find that applicant is a "holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted . . ." within the meaning of that language in § 3(a)(4) of the act.

Moreover, since Indiana Gas & Chemical Corporation was not a holding company as that term is defined in § 2(a)(7) until a few months ago when its subsidiary, Terre Haute Gas Corporation, became a public utility company[7] we are of the opinion that applicant is at this time entitled to a finding that it is "temporarily a holding company" within the purpose and intent of said § 3 (a)(4).

Applicant alleges that it intends to dispose of its holdings in Indiana Gas & Chemical Corporation as soon as certain recently effected changes with respect to the latter's business, including the above-described acquisition by its subsidiary, have had an opportunity to be reflected in increased earnings and improved market prices of such stock, and that it will endeavor to make such disposition within the ensuing six months.

Because of these representations and because prolonged ownership by a large life insurance company of 10 per cent or more of the voting securities of a public utility holding com-

ness substantially in a single state in which such holding company and every such subsidiary company thereof are organized; or

(2) such holding company is predominantly a public utility company whose operations as such do not extend beyond the state in which it is organized and states contiguous thereto.

(b) *Exception.* Unless otherwise required by the Commission a holding company which is a subsidiary of a registered holding company need file only the initial statement on Form U-3A-2.

[4] See File No. 69-45 filed April 7, 1941.

[5] The $3 preferred stock has five votes per share and its holders voting as a class are entitled to elect a majority of the directors; the common stock has one vote per share and its holders voting as a class are entitled to elect a minority of the directors.

[6] Applicant also owns first mortgage 4 per cent bonds of Terre Haute Gas Corporation in the aggregate principal amount of $720,000 which were purchased by it at par. The bonds were sold to applicant to finance the initial payment for the Terre Haute division properties.

[7] See definition contained in § 2 (a) (4) and (5).

pany would not be consistent with the policy of that exemption provision, we will grant applicant an exemption pursuant to § 3(a)(4) of the act from § 4 and all provisions of the act applicable to registered holding companies,[8] for a period of six months from the date hereof.

An appropriate order will issue.

ORDER

Massachusetts Mutual Life Insurance Company having filed an application pursuant to §§ 3(a)(4) of the Public Utility Holding Company Act of 1935 for an order exempting it from the provisions of said act; a hearing having been held thereon after appropriate notice; and the Commission having considered the record of said hearing and made findings based thereon;

It is hereby *ordered* that Massachusetts Life Insurance Company be and it is hereby exempted for a period of six months from the date hereof from all of the provisions of said act applicable to holding companies or to registered holding companies by reason of its ownership of 10 per cent or more of the voting securities of Indiana Gas & Chemical Corporation; said Massachusetts Mutual Life Insurance Company shall, however, be subject to all provisions of said act applicable to "any person" or to "an affiliate."

It is *further ordered* that the jurisdiction of this Commission be and the same is hereby reserved for the purpose of entering such further orders as may from time to time be deemed appropriate.

[8] Applicant will, however, remain subject to all provisions of the act relating to "any person" or an "affiliate."

UNITED STATES DISTRICT COURT N. D. ILLINOIS, E. D.

Interstate Commerce Commission

v.

Kraft Cheese Company et al.

[No. 2016.]

(38 F Supp 764.)

Motor carriers, § 36 — Liability insurance — Amounts in excess of requirement of Commission.

1. Transportation companies do not violate the provisions of the Federal Motor Carrier Act, 1935, § 201 et seq., as amended, 49 USCA § 301 et seq., by procuring and paying for policies of insurance protecting them in excess of the minimum limits required by the Interstate Commerce Commission against their legal liability on shipments handled for a certain shipper, and the shipper does not violate any of the provisions of the Motor Carrier Act because of the fact that the policies were carried by the carriers with the knowledge of the shipper, p. 307.

Motor carriers, § 36 — Liability insurance — Separate policies — Amounts in excess of requirement of Commission.

2. The Federal Motor Carrier Act does not prevent carriers from protecting themselves against their legal liability to shippers for loss or damage to cargoes transported in excess of the minimum limits of insurance coverage required by the Interstate Commerce Commission by carrying separate policies of insurance covering the shipments of different shippers, p. 307.

Rates, § 253 — Schedules — Contents — Provision as to insurance.

3. Motor carriers are not required to specify, in tariffs under which shipments are handled by them for a shipper, the insurance carried by them to protect themselves against their legal liability to the shipper for loss or damages to cargoes transported, p. 307.

Discrimination, § 241 — Proof required — Classes of shippers.

4. In order to show that any undue or unreasonable preference or advantage has been given to a certain shipper by a transportation company or that any particular person has been subjected to any unjust prejudice or disadvantage by reason of a carrier's treatment of such shipper, it must be shown not only that a preference, advantage, or discrimination had been given to the shipper but also that the shipper is in the same class with other shippers who have not received the alleged preference, advantage, or discrimination, p. 307.

[May 1, 1941.]

ACTION *by Interstate Commerce Commission against a shipper and transportation companies involving liability insurance policies alleged to violate the Federal Motor Carrier Act; complaint dismissed.*

APPEARANCES: Colin A. Smith and Hugh E. Lillie, both of Chicago, Ill., for Interstate Commerce Commission; Nicholson, Snyder, Chadwell & Fagerburg and D. F. Fagerburg, all of Chicago, Ill., for Kraft Cheese Co.; David Axelrod, of Chicago, Ill., for Shippers Dispatch, Inc., Decatur Cartage Co., and Advance Transp. Co. of Illinois.

WOODWARD, D. J.: The issues in the above-entitled action having been regularly brought on for trial upon a stipulation of facts, briefs of counsel filed, and oral arguments heard, the court being fully advised in the premises, hereby finds as follows:

Findings of Fact

1. That the court has jurisdiction over the parties hereto and the subject matter of this suit.

2. That the parties hereto by their respective counsel have entered into a stipulation of facts.

3. That the policies of insurance issued by Aetna Insurance Company, copies of which are attached to plaintiff's complaint as Exhibits "D," "E," and "F" were issued to defendants, Shippers Dispatch, Inc., Decatur Cartage Company and Advance Transportation Company of Illinois, respectively, for the protection of said defendant carriers; that said policies contain no provisions giving any right

thereunder to defendant, Kraft Cheese Company; that in said policies the insurance company reserves the right to adjust any loss or damage with the owner or owners of merchandise lost or damaged by said defendant carriers; that under the terms of said policies issued by the Aetna Insurance Company said policies do not insure the legal liability of the assured carriers if, at the time of loss, there is any other insurance (excepting such insurance as may be arranged by the shipper or consignee) which would attach if such insurance had not been effected; that said policies contain no provisions preventing or restricting settlement by the Aetna Insurance Company with defendant carriers without the consent of defendant Kraft Cheese Company.

4. That the certificates of insurance filed with and approved by the Interstate Commerce Commission, copies of which are attached to said stipulation of facts as Exhibits "G," "H–1," "H–2," and "I," provide that the policies of cargo insurance therein described have been amended by the attachment of endorsement form number B.M.C. 32 approved by the Interstate Commerce Commission to provide compensation for loss or damage to all property belonging to shippers or consignees and coming into the possession of the insured in connection with its transportation service; that endorsement form number B.M.C. 32, approved by the Interstate Commerce Commission, referred to in said certificates, provides that the insurance company agrees to pay any shipper or consignee for all loss of or damage to all property belonging to such shipper or consignee and coming into possession of the insured in connection with its transportation service within the limits of liability provided in said endorsement, to wit, not in excess of $1,000 in respect of the loss of or damage to such property carried on any one motor vehicle and not in excess of $2,000 in respect to any loss or damage to or aggregate of losses or damages of or to the property insured occurring at any one time and place; that said endorsement form number B.M.C. 32 further provides that within the limits of liability provided in said endorsement no provision contained in said policy or any other endorsement thereon shall affect the rights of any shipper or consignee under said endorsement form number B.M.C. 32; that said endorsement form number B.M.C. 32 does not amend or alter the terms and conditions of the policies to which said endorsement form number B.M.C. 32 is attached with reference to liability in excess of said $1,000 and $2,000 limited provided in said endorsement.

5. That Exhibit "J," the policy issued to defendant Shippers Dispatch, Inc., by Springfield Fire and Marine Insurance Company on December 15, 1937, covered the carrier's legal liability to shippers generally for loss in the amount of $10,000 on the cargo of any one truck or trailer and loss in the amount of $20,000 in any one disaster except in the case of certain classes of commodities such as wines, liquors, etc., not here involved, where liability was further limited; that by endorsement dated December 15, 1937, shipments for defendant Kraft Cheese Company and its subsidiary Pabstett Corporation were excepted from coverage; that the premium paid

by defendant Shippers Dispatch, Inc., for said policy was 1.80 per cent of the gross receipts received by it less the gross receipts from the companies whose shipments were not covered; that effective January 1, 1939, this rate was reduced to 1 per cent of the gross receipts up to $40,000 and ½ per cent of the gross receipts in excess thereof; that effective December 1, 1939, the rate for gross receipts in excess of $40,000 was reduced to ¼ per cent; that on June 11, 1940, this policy was extended to cover shipments for defendant Kraft Cheese Company, from which time the gross receipts received from defendant Kraft Cheese Company were included in determining the amount of the premium; that at the time this policy was extended to include defendant Kraft Cheese Company the separate policy carried by Shippers Dispatch, Inc., with Aetna Insurance Company covering shipments handled by it for defendant Kraft Cheese Company (Exhibit "D") was canceled, more than two months prior to the commencement of this suit; that said policy (Exhibit "J") gave no rights to any shippers thereunder in excess of the $1,000 and $2,000 limits provided in endorsement form number B.M.C. 32; that said policy designated as Exhibit "J" was still in full force and effect at the time of trial.

6. That Exhibit "K–1," the policy issued to defendant Decatur Cartage Company on August 11, 1937, by United States Fire Insurance Company of New York, covered the carrier's legal liability to shippers generally not exceeding $15,000 for loss or damage on the contents of any one motor truck or trailer at any one time and not exceeding $50,000 for loss or damage in any one disaster at any one time except in the case of certain specified classes of commodities not here involved, to wit, wines and liquors, where liability was further limited; that this policy expressly provided that it did not insure the legal liability of defendant Decatur Cartage Company where there was any other insurance which would attach if this insurance had not been effected; that it has been stipulated that Exhibit "E" (the policy issued by Aetna Insurance Company to Decatur Cartage Company) was in full force and effect at all times involved in this suit; that the premium on this policy was 1¼ per cent of the gross receipts less gross receipts received from defendant Kraft Cheese Company; that no shippers were given any rights under said policy in excess of the $1,000 and $2,000 limits provided in endorsement form number B. M. C. 32.

7. That Exhibit "K–2," the policy issued to defendant Decatur Cartage Company on February 12, 1940, by United States Fire Insurance Company covered the legal liability of defendant Decatur Cartage Company for loss or damage to shipments not exceeding $15,000 on the contents of any one motor truck or trailer and not exceeding $50,000 in any one disaster at any one time with the exception of certain specific classes of commodities not here involved, to wit: wines and liquors; that this policy did not insure the legal liability of defendant Decatur Cartage Company where at the time of the loss there was any other insurance which would attach if this insurance had not been effected; that it has been stipulated that Exhibit

"E" (the policy issued by Aetna Insurance Company to Decatur Cartage Company) was in full force and effect at all times involved in this suit; that the premium paid by defendant Decatur Cartage Company for this policy was .8 per cent of the gross receipts less gross receipts received from defendant Kraft Cheese Company, said rate being increased to 1 per cent of the gross receipts less gross receipts from defendant Kraft Cheese Company on October 1, 1940; that in this policy and in the policies designated as Exhibits "D," "E," "F," and "K–1," hereinabove referred to the insurance companies reserved the right to adjust any loss with the owner or owners of the merchandise lost or damaged; that no shippers were given any rights under the policy, Exhibit "K–2," against the insurance company in excess of the $1,000 and $2,000 limits provided in endorsement form number B.M.C. 32; that this policy was still in full force and effect at the time of trial.

8. That Exhibit "L–1," the policy issued to defendant Advance Transportation Company of Illinois, Inc., on November 1, 1937, was canceled as of March 15, 1939, and plaintiff and defendants have stipulated that said policy can be disregarded in this case.

9. That Exhibit "L–2," the policy issued to defendant Advance Transportation Company of Illinois, Inc., on March 15, 1939, by Fireman's Fund Insurance Company, covered the legal liability of defendant Advance Transportation Company of Illinois, Inc., to shippers generally for loss or damage to shipments not exceeding $7,500 on the contents of any one truck or trailer and not exceeding $15,000 in any one loss or catastrophe except in the case of certain specific classes of commodities such as wines, and liquors, etc., not here involved, where liability was further limited; that it was provided in this policy (Exhibit "L–2") that this insurance should be null and void so far as concerns any loss to the extent of any other insurance by whomever effected directly or indirectly covering the liability of the assured for the same property; that shipments for defendant Kraft Cheese Company were specifically excepted by endorsement dated April 1, 1939, which provided that "Assured may deduct such gross receipts from the usual monthly report to the company, as are procured from Kraft-Phenix Cheese Co., in view of the lower rate provided by the Aetna Insurance Co., to the Advance Transportation Co. of Ill., Inc."; that the premium paid for said policy by defendant, Advance Transportation Company of Illinois, was originally 2¼ per cent of the gross receipts received from other shippers less receipts from defendant Kraft Cheese Company and later on November 3, 1939, this premium was reduced to 2 per cent of gross receipts less receipts received from defendant Kraft Cheese Company; that under paragraph 10 of this policy it was provided that the insured shall not interfere with any negotiations for settlements carried on between the insurance company and the owners of the property; that said policy gives no rights to any shippers thereunder in excess of the $1,000 and $2,000 limits provided in said endorsement form number B.M.C. 32; that this policy was still in full force and effect at the time of trial.

10. That the aforesaid policies designated as Exhibits "J," "K–1," "K–2," and "L–2" were referred to and were issued by companies named in said certificates of insurance approved by the Interstate Commerce Commission designated respectively as Exhibits "G," "H–1," "H–2," and "I."

11. That Exhibit "L–3," issued to defendant Advance Transportation Company of Illinois by Lloyd's, covered the period from March 13, 1939, to March 15, 1939, at which time it was canceled and plaintiff and defendants have stipulated that said policy may be disregarded in this case.

12. That Exhibit "L–4," the Lloyd's policy issued to Advance Transportation Company of Illinois on March 15, 1939, indemnified defendant Advance Transportation Company of Illinois against loss or damage to property of shippers during transportation up to $9,000 in excess of the losses covered by primary policy designated as Exhibit "L–2" and covered only losses and was subject to the same terms and conditions as said policy designated as Exhibit "L–2"; that the premium on this excess policy was 3/16 of 1 per cent of the assured's gross receipts; that this policy was effective for the period from March 15, 1939, to March 15, 1940, and was effective during the period of shipments referred to in Exhibits "A," "B," and "C."

13. That the record herein does not show that defendant carriers Shippers Dispatch, Inc., Decatur Cartage Company or Advance Transportation Company of Illinois have at any time involved in this suit granted any preference or advantage to or discriminated in favor of defendant Kraft Cheese Company.

14. That the record herein does not show that defendant carriers Shippers Dispatch, Inc., Decatur Cartage Company or Advance Transportation Company of Illinois have charged or demanded or collected or received a greater or less or different compensation for transportation or for any service in connection therewith between the points enumerated in their tariffs than the rates, fares and charges specified in the tariffs in effect at the times here in question; or that said defendant common carriers have refunded or remitted in any manner or by any device, directly or indirectly, or through any agent or broker or otherwise to defendant Kraft Cheese Company any portion of the rates, fares, or charges so specified or extended to defendant Kraft Cheese Company any privilege or facilities for transportation in interstate or foreign commerce, except such as are specified in their tariffs.

15. That the record herein does not show that defendant carriers Shippers Dispatch, Inc., Decatur Cartage Company or Advance Transportation Company of Illinois have offered, granted, or given to defendant Kraft Cheese Company or that defendant Kraft Cheese Company has solicited, accepted, or received from said defendant carriers any rebate, concession or discrimination at any time involved in this suit.

16. That plaintiff has not shown that the risks, conditions, and circumstances under which defendant carriers handled shipments for defendant

Kraft Cheese Company were the same or similar to the risks, conditions and circumstances under which they handled shipments for other shippers.

Upon such facts so found the court makes its conclusions of law as follows:

Conclusions of Law

[1] 1. That defendant carriers, Shippers Dispatch, Inc., Decatur Cartage Co. and Advance Transportation Company have not violated the provisions of the Federal Motor Carrier Act, 1935, § 201 et seq., as amended, 49 USCA § 301 et seq., by procuring and paying for the policies of insurance issued by Aetna Insurance Company designated as Exhibits "D," "E," and "F" protecting them in excess of the $1,000 and $2,000 minimum limits required by the Interstate Commerce Commission against their legal liability on shipments handled by them for defendant Kraft Cheese Company, and defendant Kraft Cheese Company has not violated any of the provisions of the Federal Motor Carrier Act, 1935, as amended, because of the fact said policies of insurance designated as Exhibits "D," "E," and "F" were carried by the defendant carriers with the knowledge of defendant Kraft Cheese Company.

[2] 2. That the Federal Motor Carrier Act, 1935, as amended, does not prevent defendant carriers, Shippers Dispatch, Decatur Cartage Company and Advance Transportation Company of Illinois, from protecting themselves against their legal liability to shippers for loss or damage to cargoes transported in excess of the minimum limits of insurance coverage required by the Interstate Commerce Commission by carrying the separate policies of insurance designated as Exhibits "D," "E," "F," "J," "K–1," "K–2," "L–2," and "L–4" covering the shipments of different shippers.

[3] 3. That the defendant carriers, Shippers Dispatch, Inc., Decatur Cartage Company and Advance Transportation Company of Illinois, were not required to specify in the tariffs, under which the shipments referred to in the bill of complaint were handled by them for defendant Kraft Cheese Company, the insurance carried by them to protect themselves against their legal liability to defendant Kraft Cheese Company for loss or damages to cargoes transported for defendant Kraft Cheese Company.

[4] 4. That in order to show that any undue or unreasonable preference or advantage has been given to defendant Kraft Cheese Company or that any particular person has been subjected to any unjust prejudice or disadvantage by reason of the defendant carriers' treatment of defendant Kraft Cheese Company, plaintiff must show not only that a preference, advantage, or discrimination has been given to defendant Kraft Cheese Company but also that defendant Kraft Cheese Company is in the same class with other shippers who have not received the alleged preference, advantage, or discrimination, which the plaintiff has not shown in this case.

5. That the plaintiff has not proved any violation by any of the defendants of any of the provisions of §§ 215, 216(d), 217(b) or 222(c) or any other provision of the Federal Motor Carrier Act, 1935, as amended, or the

regulations of the Interstate Commerce Commission promulgated thereunder.

6. That plaintiff's bill of complaint should be dismissed for want of equity.

CALIFORNIA RAILROAD COMMISSION

Re N. A. Gotelli

[Decision No. 34187, Application No. 22957.]

Monopoly and competition, § 66 — Motor trucking service — Existing highway common and highway contract carriers.

1. The fact that so-called radial highway common and highway contract carriers are transporting substantially all the produce between certain points does not detract from the need for a highway common carrier service; operators of the former type are under no duty to maintain adequate and continuous service, and the public is not protected against discriminatory practices on their part, p. 310.

Certificates of convenience and necessity, § 85 — Grounds for denial — Illegal operation.

2. An exception will be made to the rule that the Commission will not grant a certificate to one who has wilfully violated the law in building up the service which he seeks to have certified, where the public need for the service is sufficiently great to overcome the taint of illegality attached to prior operations, p. 310.

[May 13, 1941.]

APPLICATION *for certificate of public convenience and necessity to operate as a common carrier by motor vehicle for the transportation of fruits and vegetables; granted in part.*

APPEARANCES: Ware & Berol, by Edward M. Berol and Marvin Handler, for applicant; Louttit, Marceau & Louttit, by Daniel V. Marceau, for Virgilio Antonini, protestant; Decoto & Hardin, by Ezra Decoto, for Pete Rampone, protestant; McCutcheon, Olney, Mannon & Greene, by F. W. Mielke, for The River Lines, protestant; Edward Stern, for Railway Express Agency, Inc., protestant; William Meinhold, for Southern Pacific Company and Pacific Motor Trucking Company, protestants; H. A. Lockwood and William T. Brooks, for Atchison, Topeka & Santa Fe Railway Company-Coast Lines, protestant; L. N. Bradshaw, for Western Pacific Railroad Company, protestant.

BAKER, Commissioner: N. A. Gotelli, applicant herein, requests a certificate of public convenience and necessity to establish and operate an on-call highway common carrier service for the transportation of fresh fruits

and vegetables between Stockton and all points within a radius of 20 miles thereof, on the one hand, and Los Angeles and points and places on San Francisco bay, including Oakland, San Francisco, Alameda, Emeryville, Berkeley, and Piedmont, on the other hand.

The matter was consolidated for the purpose of taking evidence with Case No. 4435, a formal investigation instituted by the Commission on its own motion to determine whether or not Gotelli was conducting a highway common carrier service between the Stockton area and San Francisco and Oakland without proper authority therefor, and public hearings were thereafter held in Stockton on November 1, 2, and 3, December 12, 13, 14, and 15, 1939, and February 29, 1940, and in San Francisco on January 19, 1940. The proceedings were submitted on briefs which have since been filed, and the Commission has already issued its decision in Case No. 4435.[1]

Protests to the granting of the application have been made by Virgilio Antonini, who operates a highway common carrier service for the transportation of fresh fruits and vegetables between the Stockton area and San Francisco and Oakland, Railway Express Agency, Inc., an express corporation operating between all the points in question, and Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company, Pacific Motor Trucking Company, and Western Pacific Railroad Company, each of which serves some or all of said points. The protests of Pete Rampone and the River Lines were withdrawn during the course of the hearing.

Applicant in reality seeks authority for two separate operating rights, the one between Stockton and Los Angeles, and the other between Stockton and the San Francisco bay area, and the evidence relating to each calls in a large measure for separate consideration. Because of various circumstances, it is deemed advisable to rule with respect to the Los Angeles operation at this time and to reserve disposition of the remainder of the application until a future date.

An analysis of the evidence bearing on the proposed Stockton-Los Angeles operation raises three questions, as follows: (1) the public need for the service, (2) the ability of applicant to conduct it on a compensatory basis, and (3) the effect of his prior operations.

Stockton is the center of a rich agricultural area in which fresh fruits and vegetables exceeding $10,000,000 in value are grown annually. Much of this produce moves to eastern points, but great quantities of it, aggregating many thousands of tons, are marketed in San Francisco, Oakland, and Los Angeles. At the present time there is no highway common carrier certificated to transport fresh fruits and vegetables from Stockton to Los Angeles. The need for such a service, however, is clearly evident from the record. Numerous witnesses testified that they consider truck transportation essential to the proper marketing of their commodities, and pointed to certain advantages of trucks over railroads in

[1] Decision No. 33737, issued on December 17, 1940, 43 Cal RCR 193, in which the Commission found that Gotelli had been operating as a highway common carrier between the Stockton area and San Francisco and Oakland, and ordered him to cease and desist therefrom.

handling fresh fruits and vegetables between these points. Such advantages include less handling, direct service from ranch or grower's market to wholesale distributing houses, and delivery in Los Angeles in time for marketing early on the first morning after picking of the produce. These factors combine not only to bring the growers greater returns, but also to give consumers better fruits and vegetables. The record also shows that as a matter of fact practically all of the fresh produce moving between these points is now carried by trucks operated purportedly under the authority of radial highway common carrier and highway contract carrier permits. To grant the application will not, therefore, divert any substantial revenue from the rail carriers.

[1] The fact that so-called radial highway common and highway contract carriers are now transporting substantially all of the produce moving between these points does not detract from the need for a highway common carrier service. Operators of the former type are under no duty to maintain adequate and continuous service, and the public is not protected against discriminatory practices on their part. As the record shows, they frequently refuse to accept small shipments during the off-peak seasons when full loads are not always available. The traffic in question is large in volume, amounting to many thousands of tons annually, and the public is entitled to enjoy the services of a highway common carrier who will be required at all times to provide adequate, nondiscriminatory service whenever needed. I am of the opinion that public convenience and necessity require the establishment of the proposed service from the Stockton area to Los Angeles. No need for a return movement has been shown, however, and accordingly no authority therefor should be granted.

No serious question has been raised as to applicant's ability to conduct the proposed operation to Los Angeles on a compensatory basis. The large volume of traffic and applicant's experience in transportation matters warrant the expectation that the proposed operation will yield a reasonable return.

[2] The chief ground of protest to the granting of the application to serve Los Angeles is that respondent allegedly has been conducting such an operation unlawfully in the past and that the Commission, in line with the principle announced in numerous decisions, should deny a certificate to a carrier who has wilfully violated the law in building up the service which he seeks to have certificated. It is true that, as a general policy, regard for the law and fairness to competing carriers call for a denial of a certificate to such an operator. The application of this principle is always subject, however, to the convenience and necessity of the public, the promotion of whose interests is of paramount concern. While it appears that applicant has regularly served the general public between the points in question and has accordingly been operating as a highway common carrier without proper authority therefor, it is also true that a compelling public need for his proposed service has been shown. Furthermore, it is not certain that applicant was aware of the illegality of his Los Angeles operations. While he had previously been told that his

San Francisco operations appeared to be those of a highway common carrier, there is no indication that he was ever so advised with respect to the Los Angeles service. It is not to be understood, of course, that his unlawful operations are to be condoned. On the contrary, the Commission's decision in the investigation proceeding[2] directed its attorney to file a penalty suit against applicant herein for his illegal operations to San Francisco, and that has been done.[3]

In view of all the circumstances I believe that the public need for the service is sufficiently great to overcome the taint of illegality attached to his prior operations to Los Angeles and that a certificate authorizing applicant to establish a highway common carrier service from Stockton to Los Angeles, as prayed for in the application, should be granted.

N. A. Gotelli, applicant herein, is hereby placed upon notice that operative rights do not constitute a class of property which should be capitalized or used as an element of value in determining reasonable rates. Aside from their purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the state, which is not in any respect limited to the number of rights which may be given.

[2] See Note 1, *supra*.
[3] People v. Gotelli, S. F. Superior Court No. 296263.

UNITED STATES DISTRICT COURT S. D. NEW YORK

Interstate Commerce Commission

v.

Fordham Bus Corporation

(38 F Supp 739.)

Injunction, § 36 — Violation of Motor Carrier Act — Unauthorized transportation.

1. The Motor Carrier Act of 1935, 49 USCA § 322, affords full authority for the Interstate Commerce Commission to institute suit and for the Federal district court to exercise jurisdiction to enjoin the operation of scheduled trips over regular routes by a motor carrier which is authorized to operate only in round trip charter operations over irregular routes, p. 313.

Injunction, § 49 — Nature of suit — Complaint.

2. An action brought in the Federal district court by the Interstate Commerce Commission to enjoin operation of scheduled trips over regular routes by a motor carrier which is authorized to operate only in round-trip charter operations over irregular routes is not in effect a petition to review or enforce an order of the Interstate Commerce Commission, but is clearly

an action to restrain the defendant from any further violation of the Motor Vehicle Act, p. 314.

Certificates of convenience and necessity, § 127 — Operations under — Authorized charter operations — Scheduled trips.

3. The operation of scheduled trips over regular routes is without the scope of the authority granted by a certificate of convenience and necessity authorizing operation only in round-trip charter operations over irregular routes, and such operations constitute a violation of the Motor Carrier Act, p. 314.

[May 13, 1941.]

ACTION *by Interstate Commerce Commission to enjoin unauthorized operation of a motor transportation company over regular routes; injunction granted.*

APPEARANCES: Mathias F. Correa, U. S. Attorney, of New York city (Myles J. Lane, Assistant U. S. Attorney, of New York city, of counsel), for plaintiff; Charles E. Cotterill, of New York city, for defendant.

GALSTON, D. J.: This action is brought pursuant to the provisions of the Motor Carrier Act of 1935, and particularly of § 222(b), Title 49 US CA § 322(b).

The defendant is a corporation organized and existing under the laws of the state of New York and is engaged in the transportation of passengers by motor vehicle in interstate commerce for compensation in regular route operations on public highways in New York and Connecticut, between New York city and Wingdale and Wassaic, New York, by way of Connecticut, and was and is a motor carrier in interstate commerce subject to the provisions of the Motor Carrier Act of 1935, Title 49 USCA Chap. 8, § 301 et seq.

The Commission complains that for more than eight months prior to the filing of the complaint, on Sundays and legal holidays, the defendant transported by motor vehicle on public highways between the points designated, numerous passengers and charged and collected from each passenger compensation for such service, though there was not in force a certificate of public convenience and necessity issued by the Interstate Commerce Commission authorizing such transportation and such operation. It is urged that the acts of the defendant are in violation of § 206(a) of the Motor Carriers Act of 1935 and are subject to be enjoined by this court under the express provisions of § 222 (b) of the Motor Carriers Act, *supra.*

For a second cause of action it is urged that the defendant had not filed with the Commission any tariff showing any rate or fare on which said passengers were to be transported, and that such acts are in violation of §§ 217, subdivision (a) and 217, subdivision (d) of the Motor Carrier Act of 1935, 49 USCA § 317.

Accordingly, the plaintiff seeks an injunction to restrain the operation of the defendant company over the routes indicated until the defendant secures a certificate of public convenience and necessity and files a schedule of rates and fares.

The answer raises the issue whether

a certificate of public convenience and necessity was not in force; denies that it operates via any fixed route, and alleges that it has on file with the Interstate Commerce Commission, as required by law, a schedule of its minimum charges for the transportation of passengers in interstate commerce within the limits of its certificate of public convenience and necessity.

It was established at the trial that the bus corporation was incorporated in June, 1936; that it engages in the transportation of passengers by motor vehicle in charter service from the city of New York to points in the states of New York, New Jersey, Pennsylvania, and Connecticut. On February 24, 1938, the Interstate Commerce Commission issued an order to the defendant authorizing the issuance of a certificate of public convenience and necessity for the transportation of passengers in special or charter service over irregular routes from New York city to places in the above-named states. On March 24, 1938, the defendant sought to have such order include the states of Delaware, Maryland and Rhode Island. On July 11, 1939, the Commission vacated the compliance order of February 24, 1938. On April 18, 1940, the Commission issued an order directing the issuance of a certificate of public convenience and necessity to the defendant authorizing it to operate as a motor carrier over irregular routes in round trip charter operations from New York city to all points in New York, New Jersey, Pennsylvania, Connecticut, Massachusetts, Maine, Maryland, and the District of Columbia, and so far as the record discloses the finding must be that such is the only effective order of the Interstate Commerce Commission relating to the operation of defendant's busses. As thus circumscribed, the defendant under that order may operate only in round trip charter operations over irregular routes.

So far as tariffs are concerned, the certificate of the Secretary of the Interstate Commerce Commission certifies that there is on file in the office of the Commission a freight tariff for charter work in New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, Connecticut, Rhode Island, Massachusetts, and Maine, which was received by the Commission on July 1, 1936. The record discloses no other schedule of rates or tariffs filed by the defendant. These charges relate to a bus capacity basis, not a passenger basis, for one way or round trip from New York to Wingdale or Wassaic, or return.

The evidence discloses that the defendant does carry passengers on its busses which are operated on a regular schedule on Saturdays, Sundays, and holidays from New York to Wingdale and Wassaic through Connecticut; that it has circulated advertising matter setting forth its schedules, rates, and the terminals from which the busses depart in this interstate operation; that it sells tickets to individual passengers, charging $1.50 for a one-way trip and $2 for a round trip. It is such operation which forms the subject matter of this suit.

[1] The relevant law is found in the Motor Carrier Act of 1935, 49 USCA § 322. Subdivision (b) thereof relates to the jurisdiction of district courts to restrain violations and enforce orders. That section of the

statute in part provides: "If any motor carrier . . . operates in violation of any provision of this chapter . . . or any . . . order thereunder, or of any term or condition of any certificate . . . the Commission . . . may apply to the district court of the United States for any district where such motor carrier . . . operates, for the enforcement of such provision of this chapter . . . and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction . . . restraining such carrier . . . from further violation of such provision of this chapter. . . ."

The section affords full authority for the Commission to institute suit and for this court to exercise jurisdiction. See United States v. Trans-Missouri Freight Asso. (1897) 166 US 290, 41 L ed 1007, 17 S Ct 540.

[2, 3] The asserted position of the defendant is that this action is in effect a petition to review or enforce an order of the Interstate Commerce Commission. Such is not the language of the complaint nor its substance. It is true that the Motor Carrier Act of 1935, 49 USCA § 305(h), does empower the court to review the Commission's order. What the defendant ignores, or seeks to ignore, is that this is not a proceeding to review any order of the Interstate Commerce Commission. It is clearly an action to restrain the defendant from any further violation of the Motor Vehicle Act. The operation of the busses by the defendant, which is the subject of the present complaint, results from the failure of the defendant to procure a necessary certificate pursuant to the terms of the act for such operation. The only authority disclosed by the record is the right for the defendant to act as a common carrier in the transportation over irregular routes—be it observed not regular routes—of passengers and their baggage in round trip charter operations from New York city to points in the states which have been referred to. But clearly the sale of individual tickets and the practice of the defendant in the operation of scheduled trips over regular routes is without the scope of the authority. Its practice is not a "charter" operation nor over irregular routes.

Heed must be given to 49 USCA § 306, which in part reads: "§ 306. Certificate of convenience and necessity

(a) Necessity for; motor carriers in bona fide operation on June 1, 1935. Except as otherwise provided in this section and in § 310a, no common carrier by motor vehicle . . . shall engage in any interstate . . . operation . . . under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations. . . ."

I conclude that the operations complained of constituted a violation of the Motor Carrier Act and that the plaintiff is entitled to the judgment sought as to both causes of action.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Phœnix Glass Company

v.

Peoples Natural Gas Company

[Complaint Docket No. 13475.]

American Window Glass Company

v.

Peoples Natural Gas Company

[Complaint Docket No. 13529.]

Rates, § 83 — Powers of Commission — Suspension of schedule — Order nunc pro tunc.

The Commission has no authority to issue an order nunc pro tunc suspending the operation of a tariff stating a new rate which has become effective without the Commission exercising its statutory authority "at any time before it becomes effective" to suspend the operation of any tariff stating a new rate.

[June 2, 1941.]

PETITION *for reconsideration of Commission action refusing to suspend increased industrial gas rates; petition refused.*

By the COMMISSION: These matters come before us at this time upon petitions of complainants praying for reconsideration of the Commission action refusing to suspend increased industrial rates applicable to complainants, and contained in respondent's Tariff Supplement No. 6 to Tariff Pa. P.U.C. No. 19. The Tariff Supplement became effective February 9, 1941, having been issued December 11, 1940. A brief has been filed on behalf of complainants, and oral argument was scheduled for May 21, 1941. Respondent appeared at the oral argument, but counsel for complainant stated he was mistaken in the time and therefore no oral argument was had.

Complainants recognize that the provisions of § 308(b) of the Public Utility Law (66 PS 1148) authorize the Commission "at any time before it becomes effective" to suspend the operation of any tariff stating a new rate, but argue that the Commission can now issue an order nunc pro tunc.

We have carefully considered the

matters involved and complainant's arguments. As we view the matter, we are limited by the terms of the law and cannot suspend the rates. The power to order a matter nunc pro tunc is subject to salutary limitation, and one of the most firmly established principles is that when a statute fixes the time within which an act must be done, even the courts have no power to enlarge it. A case enunciating this principle is Wise v. Cambridge Springs (1918) 262 Pa 139, 104 Atl 863, wherein the Workmen's Compensation Board had allowed an appeal to it from the decision of a referee. Section 419 of the Workmen's Compensation Act of June 2, 1915, P.L. 736, permitted an appeal only if taken "within ten days after notice" of the action of the referee. The appeal was allowed nunc pro tunc although more than ten days had passed after such notice. The board stated that the appeal was allowed because the board had been "liberal in allowing appeals nunc pro tunc when it appears that one of the parties in interest has not had full notice of the findings and award of the referee." The supreme court reversed the board saying, at p. 142 of 262 Pa.: "If the board can allow an appeal nunc pro tunc, there would be no limit to the time within which an appeal could be taken, though the act of assembly expressly limits it."

It will be noted that the limitation involved in the Wise Decision, *supra*, affected the rights of parties before an administrative board and not the rights of the board itself. If a board has no discretion in such matters of practice where the legislature has spoken, it cannot, a fortiori, vary or avoid a limitation upon its own powers. We can exercise only such authority as has been conferred either by express words or necessary implication: Philadelphia City Passenger R. Co. v. Public Service Commission, 271 Pa 39, PUR1921E 581, 114 Atl 642.

In view of the principles of law above stated, we have no alternative to refusal of the petitions now before us; therefore,

Now, to wit, June 2, 1941, it is *ordered* that the petitions of the Phœnix Glass Company and American Window Glass Company for suspension of the rates contained in Tariff Supplement No. 6 to Tariff Pa. P.U.C. No. 19 of the Peoples Natural Gas Company be and are hereby refused.

CALIFORNIA RAILROAD COMMISSION

Re John Frank Nolan et al.

[Decision No. 34216, Application No. 23720.]

Certificates of convenience and necessity, § 78 — Grant or denial — Financial prospects.

1. The public should be given the opportunity of demonstrating, through their patronage, that there is justification for the establishment of a pas-

senger stage service and its continued operation on a profitable basis, although it appears that there is some doubt as to whether or not the service can be conducted at a profit, p. 319.

Certificates of convenience and necessity, § 73 — Conditions to granting — Notice as to subsidy.

2. One to whom a certificate is granted for the operation of a passenger stage service which has doubtful prospects of profitable operation should, when subsidized by real estate subdividers, advise patrons of such subsidy in order that no misapprehension may arise as to the future of the enterprise if sufficient public support is not forthcoming, and to this end he should be required to post in a conspicuous place in any and all equipment used a notice to the public of this subsidy so long as the arrangement is in effect, p. 319.

[May 20, 1941.]

APPLICATION *for authority to operate a passenger stage service; granted.*

APPEARANCES: R. A. Rapsey, for applicants; Ivores Dains, for Market Street Railway Company, protestant.

By the COMMISSION: This is an amended application by John Frank Nolan and Carl Simon for authority to establish and operate an automotive service as a common carrier of passengers between Sharps Park and Edgemar in the county of San Mateo, on the one hand, and the intersection of Junipero Serra boulevard and Portola drive in the city and county of San Francisco, on the other hand.

A public hearing in this matter was had in San Francisco before Examiner McGettigan on Thursday, May 1, 1941, where testimony was taken, exhibits filed, the matter submitted, and it is now ready for decision.

Market Street Railway Company, although protesting the granting of this application as made, was agreeable to the establishment of the proposed service provided the route of operation was amended to include a connection with its street car lines at Daly City.

Applicants, according to the record, are proposing to establish a daily service, consisting of seven round trips between termini.

The following fare structure is proposed:

Single fare, one way in either direction to or from Sharps Park or San Francisco	20¢
Round trip fare, ticket purchased at time of boarding bus, return limit within three days	35¢
Single fare, children under eight years of age, one way, either direction	10¢
Round trip, children, no reduction	20¢
Twenty-ride books, transferable, each ticket entitling holder to one passage in either direction—thirty-day limit	$3.00

The equipment proposed to be used in this service consists of one Chevrolet carry-all or station wagon with a capacity of eight passengers. A similar piece of equipment will be available for standby service and additional equipment may be obtained should occasion demand.

Applicants estimate that the service may be operated for approximately 5 cents per mile,[1] exclusive of drivers'

[1] Approximately a 14-mile round trip and this cost of operation is based upon the experience of the Brisbane Bus Company operating similar equipment in a comparable service.

wages, and expect to transport approximately fifty passengers per day at the commencement of operation. They have $400 in cash, $100 of which was furnished by the vice president and general manager of the Ocean Shore Land Company which is engaged in developing this section of country. He has also guaranteed these operators an additional $50 per month. The partners themselves will do the driving.

Eight public witnesses appeared and testified in behalf of applicants and a petition containing some thirty names was also filed in support of this proposal. In addition, applicants have the endorsement of the Sharps Park Improvement Club and the Ocean Shore Land Company at whose instigation and solicitation the instant application was made.

The Sharps Park and Edgemar districts here involved are residential areas with a combined population of approximately one thousand people[2] and are located in the northern portion of San Mateo County. At the present time there is no direct common carrier transportation service, except Pacific Greyhound Lines, available between this area and San Francisco which is the educational, shopping, amusement and occupational center for a majority of the residents of the districts. Pacific Greyhound Lines' service consists of one round trip morning and evening in connection with the company's service between San Francisco and Half Moon Bay.

The Market Street Railway Company's protest in this matter was directed against the route proposed to be operated by applicants. The company desired that the route be altered to connect with its Routes 14, 26 and 40 at Daly City rather than at the terminal proposed where connection would be made with its No. 12 route and also with the K line of the San Francisco Municipal Railway.

The record in this proceeding shows, in so far as the residents of Sharps Park and vicinity are concerned, a lack of common carrier transportation service between their district and the connecting electric rail and motor coach lines of the two city systems which leaves them dependent upon allegedly inadequate and unsatisfactory private car facilities for access to the business, amusement and shopping districts of San Francisco.

The record further shows that fares and schedules are satisfactory and that the route proposed by applicants was favored over that endorsed by protestant Market Street Railway Company despite the fact that an advantage in the number of services available would exist on the latter route. Several reasons were advanced for this attitude upon the part of the proponents of the route sought by applicants. These were,

(1) Connection would be afforded with both the Municipal K Line and the Market Street 12 Line affording access to the downtown district via the Twin Peaks Tunnel and access to Fleishacker pool, zoo and playfield, Golden Gate Park and the Richmond and Sunset Districts, respectively.

(2) Immediately adjacent to the Portola Drive Terminal is the West Portal shopping district which is ex-

[2] Typically and generally referred to as "one-car families" made up, for the most part, of average wage earners and small home owners.

tensively patronized by Sharps Park residents.

(3) The Daly City junction point was considered as less desirable because of traffic conditions and the fact that access to portions of the city of San Francisco, other than the downtown district, was more difficult.

In so far as Pacific Greyhound Lines' existing service was concerned, it was evident that as to local needs it was not adequate. In fact, the company waived protest to the granting of the application.

[1, 2] From this record it appears that, although a limited public need exists for service over the route and upon the basis submitted by applicants, there is some doubt as to whether or not this service can be conducted at a profit. The public, however, should be given the opportunity of demonstrating, through their patronage, that there is justification for the establishment of this service and its continued operation on a profitable basis.

Furthermore, as this service, according to the record, is to be subsidized, in part, by the Ocean Shore Land Company, real estate subdividers of the section of country here involved and therefore interested in its development, it appears reasonable to require that patrons of this line be so advised in order that no misapprehension may arise as to the future of this enterprise should sufficient public support not be forthcoming. To this end, therefore, applicants will be required to post, in a conspicuous place in any and all equipment used in this service, a notice to the public of this subsidy so long as this arrangement is in effect. The application will be granted subject to such a condition.

CALIFORNIA RAILROAD COMMISSION

Re William Callahan

[Decision No. 34151, Application No. 22830.]

Certificates of convenience and necessity, § 168 — Insufficient evidence.

1. An application for a certificate of convenience and necessity should be denied where the only testimony as to public convenience and necessity is vague, indefinite, and unconvincing and amounts to but little more than an assertion of the applicant's desire for a certificate, p. 320.

Certificates of convenience and necessity, § 168 — Burden of proof.

2. Certificates of convenience and necessity cannot be granted without adequate and affirmative proof that the proposed service is needed, p. 320.

[April 29, 1941.]

APPLICATION *for certificate authorizing maintenance of limousine and taxi service; denied.*

APPEARANCES: Alfred R. Meyers, for applicant; W. R. Williams, for Joe Ferrant, doing business as Airdrome Transport, protestant; J. L.

Ronnow, for Yellow Cab Company, protestant; Ray L. Chesbro, K. Charles Bean, and Stanley Lanham, by Frederick von Schraeder, for the city of Los Angeles and the Board of Public Utilities and Transportation of the city of Los Angeles; H. W. Stewart, for Tanner Motor Tours, interested party; D. L. Campbell, for Asbury Rapid Transit System, interested party.

By the COMMISSION: In this proceeding William Callahan seeks a certificate of public convenience and necessity authorizing the establishment and operation of a passenger stage service between Grand Central Air Terminal at Glendale, and Glendale, Burbank, Los Angeles, and Hollywood.

A public hearing was held before Examiner Paul at Los Angeles on October 11 and November 15, 1940, and the matter having been submitted is now ready for decision.

The application is opposed by Joe Ferrant, doing business as Airdrome Transport, Yellow Cab Company, and the Board of Public Utilities and Transportation of the city of Los Angeles. Tanner Motor Tours, Ltd. and Asbury Rapid Transit System are interested parties.

From the record it appears that Grand Central Air Terminal at Glendale is operated by Aircraft Industries Corporation. Pan American Airways, Inc., provides an airplane service to and from that terminal in which it uses planes of the land type. Its planes arrive there normally on Monday, Wednesday, and Friday of each week and depart therefrom usually on the following Tuesdays, Thursdays, and Saturdays. No other air line operates to or from this terminal.

[1, 2] Giving due consideration to this record, we find applicant standing alone upon his testimony that public convenience and necessity require the certification of his operations. His testimony was vague, indefinite, and unconvincing as to a public need for such certification and amounted to but little more than an assertion of his desire for a certificate. It was unsupported by the testimony of any probable user of his service that it is necessary, either because of the lack of other service or the inadequacy of existing service. An adjournment of the hearing in this matter was had to enable applicant to develop and introduce supporting evidence. This he failed to do. The Commission has repeatedly affirmed the principle that certificates of public convenience and necessity cannot be granted without adequate and affirmative proof that the proposed service is needed by those who may be expected to use it or by those in a position to have reasonably accurate and dependable knowledge of its need by those who would use it. Such a showing is absent in this record. In the light of these considerations and the state of this record we are of the opinion that the application should be dismissed without prejudice. The order will so provide.

ORDER

A public hearing having been held in the above-entitled proceeding, the matter having been duly submitted, and the Commission now being fully advised,

It is *ordered* that the above-entitled application is hereby dismissed without prejudice.

Industrial Progress

Selected information about manufacturers, new products, and new methods. Also news on utility expansion programs, personnel changes, recent and coming events.

Equipment Items

Diesel-Electric Buses for Schenectady

Ten diesel-electric buses are to be used by the Schenectady Railway Company to care for the traffic on one of its heaviest capacity lines, running through the business section and out State Street, it has been announced by Abram V. Louer, trustee of the company. They will replace street cars. The buses, of 35-passenger capacity, will be built by the Twin Coach Company and will incorporate General Electric drive, including electric service brakes. These will be the first electric-drive buses to go into service in Schenectady.

"Stop-and-Go" Device Aids Rural Service

A new automatic "stop-and-go" device that will improve electric power service in rural areas and cut down maintenance costs has been developed by the Westinghouse Electric and Manufacturing Company. The apparatus, known as an automatically reclosing circuit breaker, directs electrical traffic like a policeman at a street intersection. In the event of a short circuit, it stops the flow of electricity, preventing the trouble from reaching the power house. Five seconds later it restores the current to the power system. Because 80 per cent of all power faults are temporary, this brief period between the stop and go provides ample time for most troubles to correct themselves.

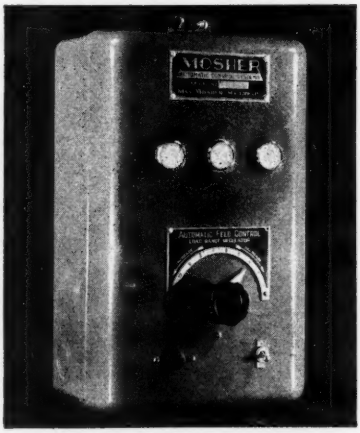
More Trolley Coaches for Des Moines

The old interurban trolley line connecting Des Moines and Valley Junction (recently renamed West Des Moines) is to be replaced by seventeen 44-passenger trolley coaches. They will be built by J. G. Brill Company, and will have complete General Electric equipment. The new coaches will make a total of 60 in Des Moines.

The coaches will run express to the downtown district, cutting the operating time from the 15 minutes now required by the trolley service to 9½ minutes. The old interurban roadbed will be paved to make available an eight-lane highway running west from downtown Des Moines.

Electric Control of Pulverizers

An electronic robot now controls the mechanical feeding of pulverizing machinery with far greater accuracy and economy than would be humanly possible. Such close and constant checkup provided by the Mosher



Electronic Robot Controls Mechanical Feeders

Automatic Control safeguards against such commonplace troubles as clogging, overheating and motor burnouts arising from overloading because of variations from lot to lot, due in turn to change in moisture content which increases or decreases grindability. The Automatic Control is available through Max Mosher of 130 W. 42nd St., New York City, and St. Louis, Mo.

Honolulu Rapid Transit Expands

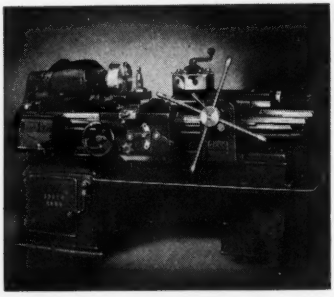
The 1941 modernization program of the Honolulu Rapid Transit System called not only for the addition of 60 trolley coaches, recently reported placed in operation, but also for an additional substation. A year ago, in announcing that more trolley coaches were being obtained, the company reported its revenues were decidedly up over the previous year. The automatic substation newly

***Equipment Items** (Cont'd)*

added to care for this traffic increase is a 1000-kw rotary converter with three automatic reclosing feeders, a duplicate of the two General Electric automatic substations already in operation there.

South Bend 16 in. Turret Lathe

A new 16 in. swing turret lathe designed for rapid production on chucking operations and bar work has been announced by the South Bend Lathe Works. This lathe has a 16¼ in. swing over the bed ways and saddle



Swing Turret Lathe

wings, 9⅝ in. swing over the tool post saddle cross slide, 1⅝ in. hole through the headstock spindle and 1 in. capacity through the collet.

Electric Calculator Solves Power Problems

An alternating current network calculator, developed by the Westinghouse Electric and Manufacturing Company, reveals the best methods of installing equipment safely, quickly and efficiently, according to the manufacturer.

The device can turn out the answers to these problems in a small fraction of the time once required by laborious mathematical calculations on paper. Using the calculator new power systems or proposed changes in old ones can be produced in miniature first, and the best economic results determined, before equipment is bought or costly changes made.

In addition to operating its own calculator full time to plan for the defense power production expansion Westinghouse in the last year has engineered the construction of two other calculators for large power companies, one in Washington, D. C., and another in Canada.

Offers Substitute for Aluminum Paint

The withdrawal from commercial sale of aluminum paint for the duration of the National Emergency affects every public utility as well as almost all industrial plants.

The shortest cut, in the opinion of most engineers to the choice of desirable substitutes lies in the employment of products already on the market—products whose general specifications and records of past performance give them definite preference for immediate purchase.

As a substitute the Rust-Oleum Paint Corporation of Chicago, Illinois, offers public utilities a rust proof paint which is similar in both appearance and performance to aluminum.

This paint is now being used on a test by a large public utility company. Its basic formula has long been in use in the production of Rust-Oleum paints, and for that reason the manufacturer believes it has many advantages for emergency need over substitutes newly compounded in the laboratory, purely for the substitute market.

The paint referred to is Rust-Oleum Silver Gray No. 183 and the Rust-Oleum Company offers tests and records to justify the purchase of test quantities to any interested utility.

Ground Resistance Meter

A moderately priced direct-reading ground resistance meter with three ranges of 0-20, 0-200, and 0-2000 ohms has been designed by the James R. Kearney Corp. of St. Louis, Mo. The manufacturer states that a brief twist of the crank with only one meter reading for each measurement makes this instrument simple to operate. Effects of electrode polarization, galvanic action and stray direct or alternating currents are completely eliminated. A long life battery supplies the power and no adjustments are required to compensate for changes in battery voltage or resistances.

Modern easy-to-operate resistance testing instruments make it simple to test every ground when it is installed and periodically thereafter.

Pressure Connector Ground Fittings

A new line of pressure connector ground fittings for use with conduit wiring, armored wire and unarmored wires was announced recently by General Electric's appliance and merchandise department at Bridgeport, Conn. These ground fittings are in accordance with the requirements of the 1940 National Electrical Code.

Standards for Electric Refrigerators

The American Standards Association has been requested by OPACs to develop standards for electric household refrigerators. The purpose of this, according to an announcement by the ASA, is to assure the public of the serviceability of electric household refrigerators in the face of shrinking supplies of

Facts You Can Use to Cut Distribution Costs

TRANSITE DUCTS RESIST CORROSION!

MAINTENANCE costs *stay* low when Transite Ducts are used. Entirely inorganic and non-metallic, these asbestos-cement ducts are highly resistant to corrosion. They can't rust or rot... won't burn.

Yet low maintenance is only part of the savings made by using Transite Ducts. Supplied in long, light lengths, these durable cableways are installed quickly and easily; thus, installation costs are kept low. For details, write for brochure DS-410. Johns-Manville, 22 E. 40th St., N. Y.

LY CORROSION-RESISTANT, rustproof rotproof, Johns-Manville Transite provide maximum assurance of long, ient life and low maintenance when alled on exposed locations. On many e installations, such as the one shown e, Transite Conduit outperforms more sive materials commonly used for purpose.

UNUSUALLY WEATHER-RESISTANT, these asbestos-cement ducts may be safely stored outdoors. Their sustained strength permits piling to convenient heights without distorting or crushing the duct.

UNIFORMLY STRONG AND DURABLE, J-M Transite Conduit needs no protective casing underground. And its tough asbestos-cement composition offers superior protection against corrosive soils.

FOR EFFICIENT, LOW-COST SERVICE, SPECIFY...

Johns-Manville TRANSITE DUCTS

TRANSITE CONDUIT... For use underground without a concrete envelope and for exposed locations.

TRANSITE KORDUCT... For installation in concrete. Thinner walled, lower priced, but otherwise identical with Transite Conduit.

raw materials, and to cut down all unnecessary variety in sizes and styles in order to conserve production facilities.

ABC-O-Matic Washer

A washer that eliminates set tubs and all tub rinsing, washes, triple rinses in running water, and damp dries a nine-pound load of wash in ten minutes is now being offered by the manufacturer, Altorfer Bros. Company of Peoria, Ill.

Employing tested and familiar principles, ABC-O-Matic washes with suds kept alive and active by a satin-smooth plastic agitator, spray rinses and dip rinses in clean, "scum-free" running water, and damp dries safely by pressure. This new washer operates efficiently either as a portable kitchen unit or as a permanent home laundry installation.

Electric Towel Dryer

An electric towel dryer, to dry kitchen towels and cloths quickly and easily, has been designed and built by the St. Charles Manufacturing Co., St. Charles, Ill., for incorporation in St. Charles steel kitchens. Air is warmed by an electric heating element and circulated by a fan placed above the drying compartment. Louvres at the top and vents below permit free air circulation. Racks slide in and out. The cabinet is made in three widths, 18, 21, and 24 inches, having two, three and four sliding racks, respectfully. In heating elements, the 18-inch and 21-inch sizes have one 350-watt element, the largest size two 350-watt elements. The cabinet is designed for inclusion in any kitchen arrangement, or as a separate cabinet with steel sub-base and linoleum top.

G-E Heating Pads

A new line of heating pads for the fall featuring new colors and new cover materials is announced by the General Electric Company's heating device section, Bridgeport, Conn.

The new heating pads are well padded to provide "cushion softness." The new de luxe heating pad (Cat. No. 136Q33) has a quilted rayon cover in soft pastel shades of blue or pink. The cover has a slide fastener so that it may be removed and is washable. The pad is waterproof to permit the use of wet packs.

The heating pads range in price from $3.95 to $6.95. All of them have these features: 12 x 15-inch dimensions, eight-foot all-rubber G-E cord with rubber plug, approval of Underwriters' Laboratories, a-c and d-c operation, rated 50 watts, 115 volts.

Egry Tru-Pak Registers

The Egry Register Company announces a number of refinements in design and operation of their popular Egry Tru-Pak Registers and the portable Egry Handipak Register.

While no radical engineering changes have been made, yet register operation has been further simplified and speeded up in keeping with the business tempo of the day. The exclusive Egry principle of alignment "It's done in the folds" is, of course, retained.

Catalogs and Bulletins

Deaeration of Boiler Feed and Process Water

Outstanding in the new Cochrane 36-page deaeration catalog is the comprehensive treatment of tray-type deaerators, atomizing deaerators, deaerating hot water generators, and cold water deaerators in one publication. An interesting feature for those employed in power plant design is a section of flow diagrams including photographs of the actual units described. A supplementary appendix on corrosion control and pH control is included.

Details of accessory equipment are included, with illustrations and drawings to show the importance of these accessories in maintaining trouble-free operation of the entire power plant. Write Cochrane Corporation, Philadelphia, Pa., for a copy of Publ. 3005.

Air-Cooled Transformers

Answers to typical questions about air-cooled transformers, 150 to 2,000 kva, for factories, mines, and central stations are given in a new 10-page booklet announced by Westinghouse Electric and Manufacturing Company.

Questions about advantages, safety features, design and tests are answered in detail. Other topics covered are size and weight, maintenance and application.

A copy of booklet B-2304 may be secured from department 7-N-20, Westinghouse Electric and Manufacturing Company, East Pittsburgh, Pa.

Allis-Chalmers Issues Defense News

A news-sheet devoted exclusively to defense production news has just been issued for the first time by the Allis-Chalmers Mfg. Company. Called "Defense Production News," it will represent a monthly report stressing the importance of this company and its 1600 products in the defense picture.

In addition to presenting news stories and pictures revealing how Allis-Chalmers products are saving time, labor and money in defense production, "Defense Production News" will help to explain the current necessity for this company's efforts being directed largely to the production of materials for defense.

Describes Protective Gaps

For use in securing maximum protection on distribution circuits, several types of protective gaps are described in a new 8-page booklet announced by Westinghouse Electric and Manufacturing Company.

Application, construction, identification and ordering information are discussed. Also described are insulated gaps designed to isolate the secondary neutral of a distribution transformer from the primary lightning arrester ground during normal conditions.

A copy of descriptive data 38-190 may be secured from department 7-N-20, Westinghouse Electric and Manufacturing Company, East Pittsburgh, Pa.

Allis-Chalmers Describes "Super" Belt

"More Power to You" is the fact-revealing story of the new Allis-Chalmers Super-7 V-belt, contained in Bulletin B-6190 just released. Presenting the points of difference in the latest Texrope V-belt, this eight-page letter-size booklet explains how the Super-7 provides longer life and greater efficiencies because of 20 per cent more and 50 per cent stronger cords, new cushion rubber zone and duplex-sealed cover.

The new "Flexon" process of making pulling cords to combine flexibility, strength, and low stretch in Super-7 V-belts is also announced. Additional pages offer a handy selection table, as well as price lists for V-belts now available from stock. Write Allis-Chalmers, Milwaukee, Wisconsin, for Bulletin B-6190.

Miniature Panel Instruments

Minature a-c and d-c voltmeters and ammeters in the two inch classification for general use are described in a new 12-page bulletin anounced by Westinghouse Electric and Manufacturing Company. Full scale readings on the d-c ammeter series are from 20 microamperes to 100 amperes and on the a-c units, from 5 milliamperes to 50 amperes. Voltmeter calibrations are from 5 millivolts to 1000 volts full scale on both a-c and d-c lines.

A copy of catalog section 43-330 may be secured from department 7-N-20, Westinghouse Electric and Manufacturing Company, East Pittsburgh, Pa.

Ballasts for Fluorescent Lamps

The importance of ballast in Mazda Fluorescent lamp operation is stressed in a recent bulletin (GEA-3293C) issued by the General Electric Co. It includes notes on the installation and operation of G-E ballasts and illustrates the complete line of ballasts for Mazda F lamps rated 15 to 100 watts together with operating data.

Dripproof Induction Motors

A recent bulletin (GEA-3475) describes and illustrates dripproof induction motors manufactured by the General Electric Co. for power-station auxiliary drive. The motors are designed for 100 to 1500 hp. continuous duty on draft fans; boiler feed pumps; condensate, circulating and other pumps; compressors, conveyors and pulverizers.

Type S-5 Incandescent Searchlight

As an aid in protective lighting, a new 18-inch searchlight, Type S-5, is described in bulletin GEA-3576 issued by the General Electric Co. The new light is generally used with a type of mounting known as pilothouse control, although other types of mounting are available.

G-E Alnico Magnet Booklet

The story of the new alnico damping magnet for G-E watthour meters is told in an attractively illustrated booklet (GES-2764) recently issued by the General Electric Co.

The one-piece, all welded construction of the new alnico magnet, the booklet points out, assures permanence of mechanical dimensions. Its high coercive force, it is stated, makes it stable under all service conditions, including those introduced by even relatively severe demagnetizing currents.

Manufacturers' Notes

Infra-Red Lamps Speed Transformer Production

A battery of 1,368 infra-red lamps is helping Westinghouse Electric and Mfg. Co. speed the production of electric transformers needed for defense by doing an hour's job in 8 minutes.

The electric drying lamps dry transformer tanks from six to eight times as fast as the former method, according to H. V. Putman, manager of the Westinghouse transformer division, Sharon, Pa. The lamps are no more expensive to install or maintain than the old steam heated baking ovens, but has stepped up tremendously the production of distribution transformer tanks at a time when speed is of utmost importance.

G-E Displays for Farm Shows

To aid dealers in preparing distinctive booths for use in farm shows and exhibits, the farm sales section of the General Electric appliance and merchandise department, Bridgeport, Conn., has prepared a variety of displays and backgrounds. The equipment is available on a loan rental basis.

Frederick W. Robertshaw

Frederick W. Robertshaw, founder of the Robertshaw Thermostat Company, retired inventor and industrialist, died on August 24th at his home in Pittsburgh, Pa., at the age of 88.

Mr. Robertshaw, who was of English parentage, founded the Robertshaw Thermostat Company in Pittsburgh, Pa. He was born in Covington, Ky., on July 10, 1853.

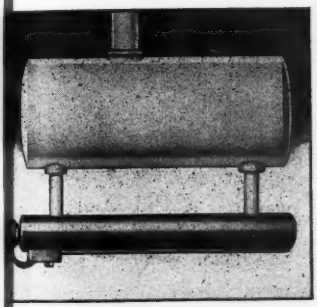
speed up the Defense Program . . .

"WE'VE GOT MORE STEAM PROCESS WORK THAN OUR BOILERS CAN HANDLE. DEFENSE STUFF, TOO! CAN YOU HELP US IN ANY WAY?"

THE MANUFACTURER

"CERTAINLY WE CAN HELP! WE'LL HAVE A MAN AROUND IMMEDIATELY TO CHECK ON THE POSSIBILITIES OF USING ELECTRIC HEAT FOR YOUR PROCESS."

THE UTILITY EXECUTIVE



SIMPLE GENERATOR FOR PROCESS STEAM

Here is a simple set-up easily assembled, using a small tank and a standard Chromalox circulation heater of suitable capacity, depending upon steam pressure and volume required. Our files contain many variations of this arrangement to meet specific conditions. This data is at your service.

Another power customer made happy by

CHROMALOX

ELECTRIC HEATING UNITS

And he will be happier still when he discovers how simple it is to hook in small, individual electrically heated boilers in process applications or supply electric heat direct. Units located close to the job they serve are efficient and eliminate steam piping. Best of all, they build electric power load, profitable load, too, mostly in off-peak periods. Get set to assist your industrial customers in a way they will never forget. Write for the Chromalox Book of Electric Heat.

EDWIN L. WIEGAND COMPANY
7500 Thomas Blvd. **Pittsburgh, Penn.**

CHROMALOX

the production booster

Silex Company Introduces the "Light Test" in Fall Campaign

Keyed to the new Silex selling theme, the "Light Test," the most aggressive advertising program in Silex history was introduced at the Silex Sales Convention, held in Hartford, Connecticut, recently.

The "Light Test," the manufacturer states, is scientific proof that Silex-brewed coffee is sparklingly clear because of the exclusive Silex filtering agent. Authorities agree that only clear coffee, free of grounds and sediment, can produce the greatest drinking pleasure.

Goddard Directs Sales for Pittsburgh Reflector

Charles H. Goddard, general sales manager of the Pittsburgh Reflector Company, has been appointed vice president and director of sales, according to a recent announcement by E. W. Simons, president. Mr. Goddard has moved his headquarters from New York City to the general office at Pittsburgh. Much of his time will be spent in the various sales territories throughout the United States.

Westinghouse Appointments

D. W. R. Morgan, George P. Passmore, and A. P. Craig will supervise increased expansion and production activities in the Westinghouse Electric and Manufacturing Company's South Philadelphia works, according to a recent announcement by R. A. McCarty, vice president.

G-E Advertising Appointments

Glenn Gundell, advertising and sales promotion director of the General Electric air conditioning and commercial refrigeration department, at Bloomfield, N. J., is now associated with the advertising division of the G-E appliance and merchandise department, at Bridgeport, Conn. He will assist Boyd W. Bullock, appliance advertising manager.

Ernest Macaulay, a member of the G-E appliance and merchandise department since 1929, has been appointed manager of advertising and sales promotion for the air conditioning and commercial refrigeration department, Bloomfield.

Harold P. Smith, formerly assistant to the advertising manager of the appliance and merchandise department, Bridgeport, has joined the G-E acounting department at Schenectady.

N. W. Ayer and Son Inc., New York, has been selected as the agency which will undertake the first advertising and promotional campaign on the automatic electric blanket, it has been announced by the G-E appliance and merchandise department.

Hygrade Sylvania Sponsors Fluorescent Conference

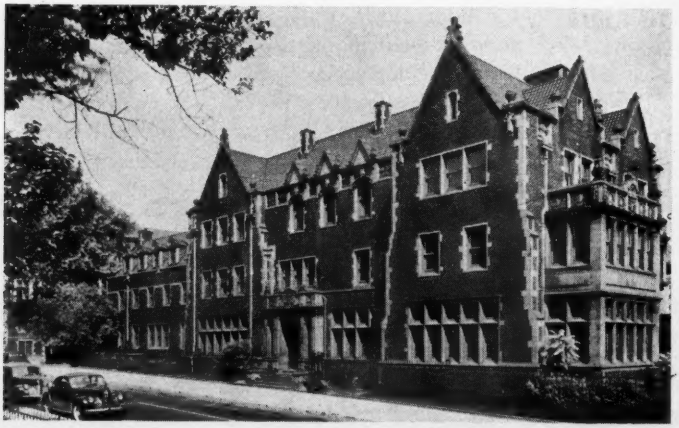
A Fluorescent Lighting Conference recently was held at Salem, Mass., by the Hygrade Sylvania Corp. The Conference was a "get-together" between utility lighting engineers invited from Metropolitan New York, Pennsylvania, and Southeastern areas, and it duplicated a very successful Conference held in June attended by utility lighting engineers from New England and Northern New York power companies.

Rockwell Represents AGAEM

Col. W. F. Rockwell, president of the Pittsburgh Equitable Meter Company and the Merco Nordstrom Valve Company, Pittsburgh, Pa., has been appointed a national councillor of the Chamber of Commerce of the United States to represent the Association of Gas Appliance and Equipment Manufacturers.

Pennsylvania Transformer Company Has New Home

The offices of Pennsylvania Transformer Company are now located in their beautiful 35 room mansion at 808 Ridge Avenue, N. S., Pittsburgh, Pa. Their four story, tapestry brick building was formerly the home of an official of a large steel company. It is strategically located—only five minutes by car from downtown Pittsburgh, and eight minutes by car from Pennsylvania Transformer factory at 1701 Island Avenue, N. S., Pittsburgh, Pa.



BOTH must breathe!

AT 30,000 feet—above all animal life, 10,000 feet above the extreme limit of Alpine mountain vegetation, higher than Everest, higher even than the South American condor soaring over Chimborazo—MAN FLIES!

Another medium has been added to the land and the sea, almost another dimension has been added to the air itself—the stratosphere. Here, planes can travel phenomenally fast, amazingly far; here are the high roads for today's bombers and tomorrow's transports; here are the new high battlefields where a superplane may rise to dominate the skies—and the earth below.

But at 30,000 feet in the stratosphere the air is so thin that no human lungs and no airplane engines can breathe deep enough to sustain life.

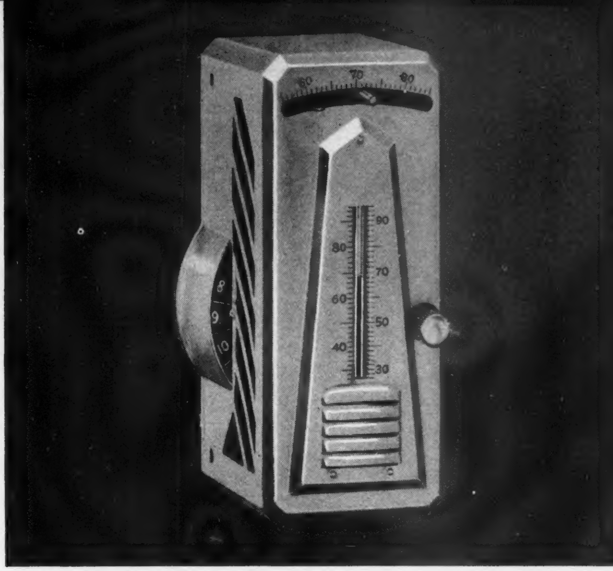
Yet with the aid of oxygen masks man breathes and survives; and, with the aid of turbosuperchargers, American-built engines can breathe and fly nearly seven miles up—"on top" of the best combat planes of any other nation.

More than 20 years ago a General Electric engineer, Dr. Sanford A. Moss, equipped a Liberty engine with a turbosupercharger that he had designed. And for more than 20 years, while America's aeronautical engineers designed ships to fly farther and faster, General Electric engineers worked to perfect the machine that would enable them to fly higher and higher.

Today, no bombers can fly farther than our American bombers, no combat planes can fly faster than our American interceptors. And, thanks to the turbosupercharger, no enemy planes can rise above them. General Electric, Schenectady, N. Y.

GENERAL ELECTRIC

962-228B1-211



SAVE FUEL

with convenient

DAY AND NIGHT TEMPERATURE CONTROL

by using

MERCOID SENSATHERM

Type DNH

The National Defense Emergency makes it necessary to cut corners in every direction on waste. All fuels in particular must be conserved. ¶ The Mercoid Day-Night Sensatherm fits into this conservation program to perfection. ¶ This thermostat permits the lowering of the room temperature during the sleeping hours and automatically causes the heating plant to restore the temperature to the desired day setting, thereby saving fuel during the lower operating temperature. ¶ It costs less than combination clock type thermostats. There is less installation expense, as there are but two simple wire connections to the hook-up, the same as is required by the regular Mercoid Sensatherm. Thus, you can replace present thermostats with minimum of effort and expense. ¶ A fine feature about this simple Day-Night temperature control over the clock type thermostat is that you control it—it does not control you. It is wound and set like a watch when you are ready to retire. According to American habits, there is considerable variance in bed time hours. With the clock type, set at a given hour, you may find yourself and company subjected to a chill if you happen to be up later than the setting calls for. This can never happen wherever a Mercoid Type DNH Sensatherm is used. ¶ This instrument is small in size, neat in appearance and dependable in performance.

THE MERCOID DAY-NIGHT SENSATHERM PRESENTS AN EFFECTIVE SELLING POINT ON ANY TYPE OF AUTOMATIC HEAT. FUEL ECONOMY PLUS CONVENIENT DAY AND NIGHT TEMPERATURE CONTROL HAVE A POPULAR APPEAL.

Mercury Switch Used—It is equipped with a magnetic type mercury switch—immune to dust, dirt or corrosion, a common cause for trouble. You have the advantage of this desirable added feature at no additional cost over competitive devices. ¶ Write for further information.

THE MERCOID CORPORATION
4233 Belmont Avenue • Chicago, Illinois

WAR ON WASTE ★ WAR ON WASTE ★ WAR ON WASTE ★ WAR ON WASTE

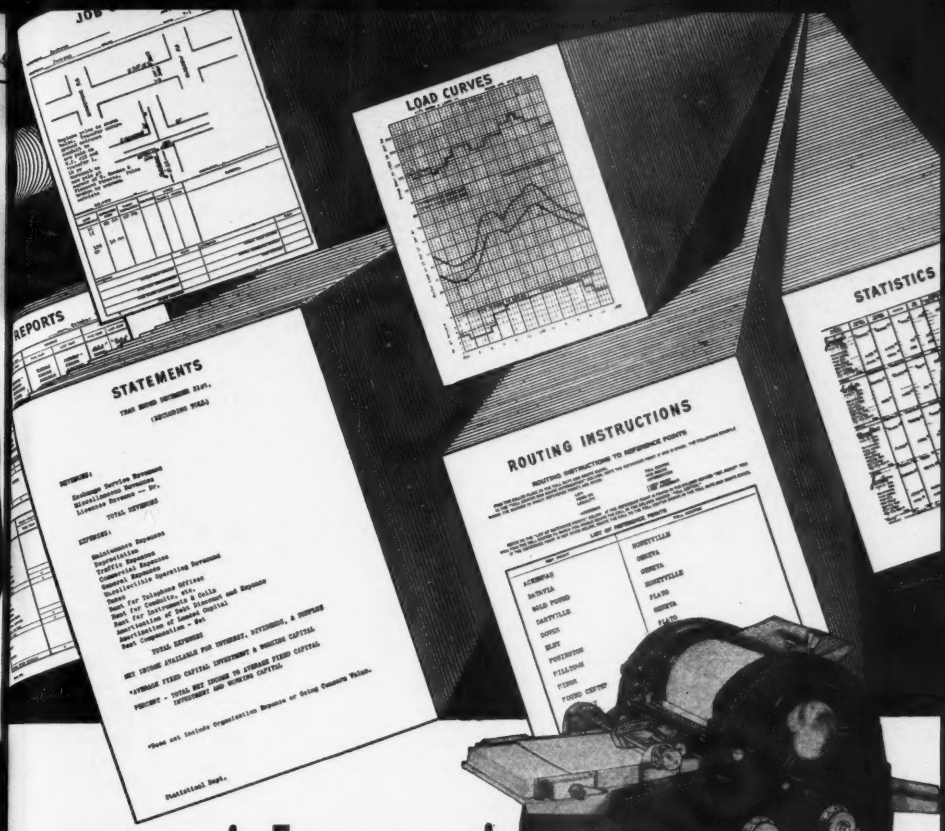
"It's a *Robertshaw* heat control—a marvel of streamlined efficiency. You turn on the fuel and set the control with one single motion. To turn it off you return the control to zero. Simple? Yes, and *sure*—the only control you *can't* forget to set!"

The simpler the contro
the easier to use,
the quicker to sell

FOR GAS AND ELECTRIC RANGES

ROBERTSHAW HEAT CONTROLS

ROBERTSHAW THERMOSTAT COMPANY, YOUNGWOOD, PA.



ccountants! Engineers!

DITTO

IS *YOU* MULTIPLIED MANY TIMES!

ese days, when personal effectiveness means so much, must turn to Ditto—to increase your influence, to eve yourself of detail, to be set for the demands the opportunities of this day!

On report operations alone, Ditto can be like an ra staff of assistants to you . . . you'll know why this is when you see what other utilities men do with Ditto! Without type, stencil or ink the new Ditto D-44 kes 300 and more bright copies of anything written, ed or drawn . . . rate schedules; operating and prog- s reports; specifications; engineering drawings; vice, factory and work orders; forms, and the like 70 copies a minute, in one to four colors at once, for the first 100, 3c thereafter. Originals can be ed repetitively—excellent for cumulative reports. Make your department more effective—get the whole ry of Ditto's public utility performance on gelatin liquid duplicators. Use coupon for free idea-booklet, opies, Their Place in Business." No obligation!

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PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design and construction. « « « « «

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INVESTIGATIONS, APPRAISALS AND STUDIES
for
ACCOUNTING AND REGULATORY REQUIREMENTS
NEW YORK WASHINGTON CHICAGO MILWAUKEE SAN FRANCISCO
and other principal cities

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ENGINEERS
NEW YORK PHILADELPHIA CHICAGO
PACKARD BUILDING

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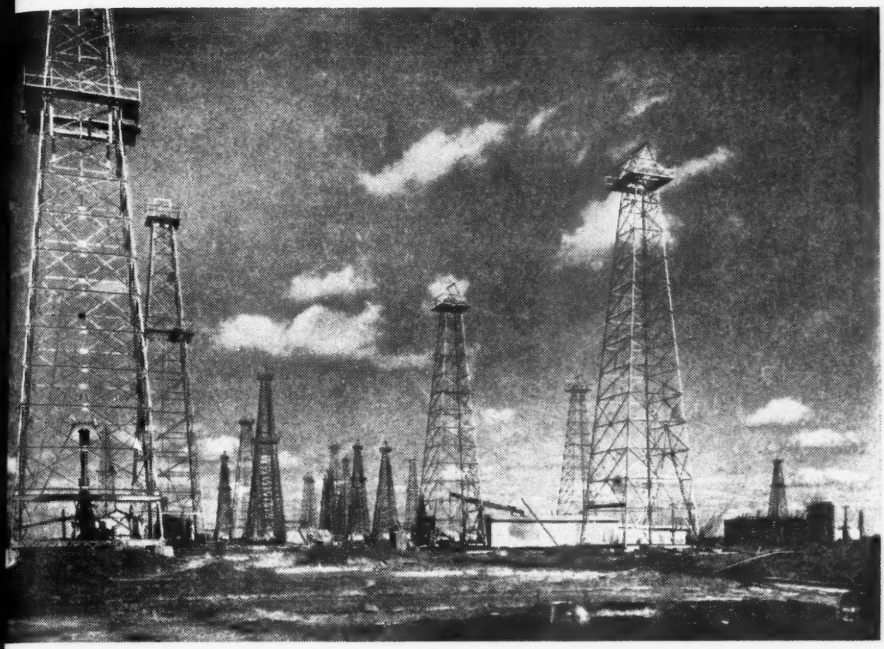

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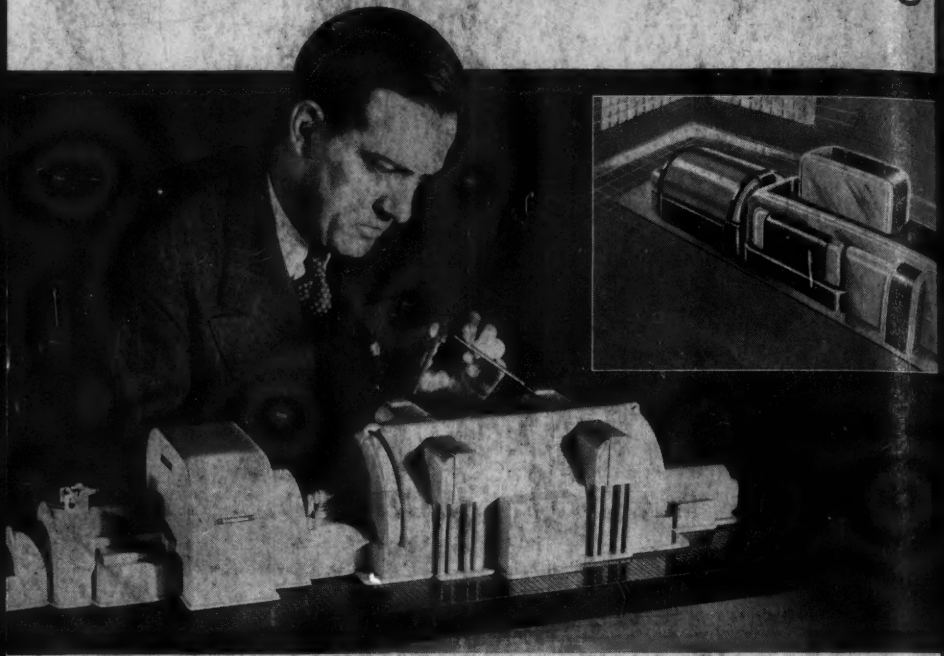

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